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6 Attorneys for Defendant  
7 RADIOSHACK CORPORATION

ORIGINAL  
FILED

JUN 23 2011

RICHARD W. WICKING  
CLERK, U.S. DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

E-7709

LB

8  
9 UNITED STATES DISTRICT COURT  
10 NORTHERN DISTRICT OF CALIFORNIA  
11 SAN FRANCISCO DIVISION

12  
13 FRANK ALLEN,

14 Plaintiff,

15 v.

16  
17 RADIO SHACK CORPORATION, DONNA  
O'CAMPO and Does 1 through 100,

18 Defendants.  
19

CV 11 3110  
Case No.:

NOTICE OF REMOVAL OF ACTION  
UNDER 28 U.S.C. § 1441(b) (Diversity)

Complaint filed: May 20, 2011

20  
21 TO THE CLERK OF THE ABOVE-ENTITLED COURT:

22  
23 PLEASE TAKE NOTICE that pursuant to 28 U.S.C. §§ 1332, 1441 and 1446,  
24 Defendant RADIOSHACK CORPORATION ("Defendant" or "RadioShack") hereby removes  
25 to this Court the state court action described below.  
26  
27  
28

## I. INTRODUCTION

This case is hereby removed from state court to federal court because at the time the Complaint was filed, and at the present time, complete diversity of citizenship exists between the parties to this action and the alleged amount in controversy exceeds \$75,000. Accordingly, this Court has original jurisdiction under 28 U.S.C. § 1332(a).

## II. THE STATE COURT ACTION

On May 20, 2011, Plaintiff Frank Allen filed a Complaint for Damages against Defendant RADIOSHACK CORPORATION and DONNA OCAMPO in the Superior Court of the State of California, County of San Francisco, entitled *FRANK ALLEN v. RADIO SHACK CORPORATION, DONNA O'CAMPO* and Does 1 through 100, Case No. CGC-11-511136. The Complaint alleges six causes of action against Defendants including: (1) Disparate Treatment in Violation of FEHA Based on Race and National Origin; (2) Retaliation in Violation of FEHA; (3) Age Discrimination in Violation of FEHA; (4) Harassment In Violation of FEHA (Hostile Work Environment); (5) Wrongful Termination in Violation of Public Policy; and (6) Intentional Infliction of Emotional Distress. A true and correct copy of the Complaint is attached hereto as **Exhibit A**.

On June 22, 2011, Defendant filed and served its Answer to Complaint in state court, a true and correct copy of which is attached as **Exhibit B**.

In accordance with 28 U.S.C. § 1446(a), attached hereto as **Exhibit C** and incorporated by reference are copies of the papers originally served on Defendant as well as copies of all other documents maintained on the state court's docket.

1 Pursuant to 28 U.S.C. § 1146(d), Defendant shall give Plaintiff, through his  
2 attorney of record, written notice of the filing of this Notice of Removal, and shall file written  
3 notice of the filing of this Notice of Removal with the Clerk of the Superior Court of the  
4 County of San Francisco, attaching thereto a copy of this Notice of Removal. A true and  
5 correct copy of the Notice of Removal of Action to be filed with the state court is attached as  
6 **Exhibit D.**

7  
8 No further proceedings have been had, and fewer than thirty (30) days have  
9 elapsed since this action became removable to this Court. In accordance with 28 U.S.C. §  
10 1446(b), this Notice is timely filed with this Court.

### 11 12 III. JOINDER

13  
14 Defendant is not aware of any other defendant having been served with a copy  
15 of the Complaint.

### 16 17 IV. DIVERSITY JURISDICTION

18  
19 The state court action is a civil action over which this Court has original  
20 jurisdiction under 28 U.S.C. § 1332 based on diversity jurisdiction. The state court action is  
21 properly removable to this Court in that it is a civil action between citizens of different states  
22 in which the amount in controversy exceeds the sum of \$75,000, exclusive of interest and  
23 costs, as explained below.

#### 24 25 A. The Parties' Citizenship

26  
27 There is complete diversity of citizenship because the operative parties,  
28 Plaintiff, Defendant RadioShack Corporation, and Defendant Donna Ocampo are citizens of

1 different states. The only other defendants identified in Plaintiff's Complaint are fictitious  
2 parties identified as "DOES I-100." The citizenship of these defendants is disregarded for  
3 purposes of removal. 28 U.S.C. § 1441(a).

4  
5 As of May 20, 2011, when the Complaint was filed, Plaintiff was a citizen and  
6 resident of the State of California. See Complaint, ¶ 1 (**Exhibit A**).

7  
8 As of May 20, 2011, when the Complaint was filed, and at the present time,  
9 Defendant RadioShack Corporation was and is a Delaware Corporation with its principal  
10 place of business in Fort Worth, Texas. Declaration of Kim Bullard in Support of  
11 Defendant's Notice of Removal ("Bullard Decl."), ¶ 2. Accordingly, RadioShack Corporation  
12 was and is a citizen of Delaware and Texas. 28 U.S.C. § 1332(c)(1).

13  
14 As of May 20, 2011, when the Complaint was filed, and at the present time,  
15 Defendant Donna Ocampo was and is a resident of the state of Colorado. Declaration of  
16 Donna Ocampo in Support of Defendant's Notice of Removal ("Ocampo Decl.") ¶¶ 2-3. For  
17 diversity purposes, a person is a "citizen" of the state in which he or she is domiciled.  
18 *Kantor v. Wellesley Galleries, Ltd.*, 704 F2d 1088, 1090 (9th Cir. 1983). Domicile is  
19 determined at the time the lawsuit was filed, not when the cause of action arises. *LeBlanc v.*  
20 *Cleveland*, 248 F3d 95, 100 (2nd Cir. 2001). A person may establish his or her domicile by  
21 establishing (i) a fixed habitation or abode in a place (ii) with intent to remain indefinitely.  
22 *Lew v. Moss*, 797 F2d 747, 749-750 (9th Cir. 1986); see also, *Kanter v. Warner-Lambert*  
23 *Co.*, 265 F3d 853, 857 (9th Cir. 2001). Donna Ocampo moved to Colorado, where she  
24 currently resides, in April, 2011 before this action was filed. It is her intent to remain there  
25 indefinitely. Ocampo Decl. ¶ 2-3.

26  
27 As of May 20, 2011, when the Complaint was filed, and at the present time, no  
28 defendant was a citizen or resident of California, and complete diversity exists.

1 **B. The Amount in Controversy**

2  
3 The amount in controversy between the parties exceeds the minimum sum of  
4 \$75,000 set forth in 28 U.S.C. § 1332(a), exclusive of interest and costs. In this lawsuit,  
5 Plaintiff is seeking recovery of lost wages in the form of back pay and front pay, damages for  
6 alleged emotional distress, and medical expenses as well as attorney's fees and costs and  
7 punitive damages. Complaint, at ¶¶ 61-65, 75-79, 86-88, 90-92, 100, 101, 103-105, 115,  
8 116, 118, Prayer for Relief, page 25. (**Exhibit A**).

9  
10 Plaintiff was terminated in April, 2010. Complaint at ¶ 37. In the first four  
11 months of 2010 he earned approximately \$25,000. Bullard Decl. at ¶ 3. That yields an  
12 average of \$6,250 per month. Plaintiff has been terminated from work at RadioShack for  
13 approximately 14 months already. Thus we can safely assume that he will seek at least  
14 \$87,500 in back pay. That alone meets the jurisdictional requirement.

15  
16 Punitive damages are a part of the amount in controversy in a civil action  
17 where they are recoverable as a matter of law. See, *Simmons v. PCR Tech.*, 209 F. Supp.  
18 2d 1029, 1033 (N.D. Cal. 2002); *Gibson v. Chrysler Corp.*, 261 F.3d 927, 945 (9th Cir.  
19 2001). FEHA discrimination cases may result in awards of punitive damages which meet  
20 the jurisdictional threshold. See, e.g., *Roby v. McKesson*, 47 Cal. 4th 686 (2009).

21  
22 Plaintiff's claim for emotional distress damages is also part of the amount in  
23 controversy. See *Simmons*, 209 F. Supp. 2d at 1034 ("emotional distress damages in a  
24 successful employment discrimination case may be substantial").

25  
26 Finally, Plaintiff seeks recovery of attorneys' fees. Complaint, at ¶¶ 65, 79,  
27 102, Prayer for Relief, page 25. (**Exhibit A**). Attorneys' fees are provided to a prevailing  
28 plaintiff under the FEHA. Cal. Govt. Code § 12965(b). Courts should include in their

1 amount in controversy calculation damages and attorneys' fees that, although not yet  
 2 accrued, are reasonable to anticipate. *Brady v. Mercedes-Benz USA, Inc.*, 243 F. Supp. 2d  
 3 1004, 1009 (N.D. Cal. 2002); *see also Simmons*, 209 F. Supp. 2d at 1035.

4  
 5 Accordingly, the amount in controversy exceeds the minimum sum of \$75,000  
 6 set forth in 28 U.S.C. § 1332(a), exclusive of interest and costs.

### 7 8 V. VENUE

9  
 10 The Superior Court of the State of California for the County of San Francisco is  
 11 located within the Northern District of California. Accordingly, this action is properly  
 12 removed to this Court. 28 U.S.C. § 84(a); Rule 3-2(d) of the Local Rules for the United  
 13 States District Court for the Northern District of California.

14  
 15 THEREFORE, Defendant gives notice that the above action, which was  
 16 pending in the Superior Court of the State of California, County of San Francisco, is hereby  
 17 removed to this Court.

18  
 19  
 20 Dated: June 20, 2011

MILLER LAW GROUP  
 A Professional Corporation

21  
 22  
 23 By: 

24 Adam J. Tullman  
 25 Attorneys for Defendant RADIOSHACK  
 26 CORPORATION  
 27

28 4816-1677-9785, v. 1

**EXHIBIT A**

1 **Angela M. Alioto, (SBN 130328)**  
2 **Angela Mia Veronese, (SBN 269942)**  
3 **LAW OFFICES OF JOSEPH L. ALIOTO**  
4 **AND ANGELA ALIOTO**  
5 700 Montgomery Street  
6 San Francisco, CA 94111-2104  
7 Telephone: (415) 434-8700  
8 Facsimile: (415) 438-4638

9 Attorneys for Plaintiff Frank Allen

10 **SUPERIOR COURT OF CALIFORNIA**  
11 **SAN FRANCISCO COUNTY**  
12 **UNLIMITED JURISDICTION**

13 Frank Allen,

14 Plaintiff,

15 VS.

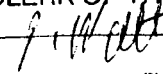
16 Radio Shack Corporation, Donna  
17 O'Campo and Does 1 through 100

18 Defendants.

**SUMMONS ISSUED**  
**FILED**  
San Francisco County Superior Court

MAY 20 2011

CLERK OF THE COURT

BY:  Deputy Clerk

**P. NATT**

CGC-11-511136

CASE NO.

COMPLAINT FOR DAMAGES FOR:

1. Disparate Treatment Based on Race/National Origin (FEHA);
2. Retaliation (FEHA);
3. Discrimination Based on Age.
4. Hostile Work Environment (Harassment) (FEHA);
5. Wrongful Termination in Violation of Public Policy
6. Intentional Infliction of Emotional Distress

JURY TRIAL DEMANDED

**BY FAX**

19 Plaintiff Frank Allen complains against Defendants Radio Shack Corporation,  
20 Donna O'Campo and Does 1-100, and demands a trial by jury of all issues and for  
21 causes of alleged actions:  
22



PARTIES AND JURISDICTION

1. At the pertinent times mentioned in this complaint, Plaintiff Frank Allen is a resident of the State of California, County of Alameda.
2. Defendant Radio Shack Corporation is an employer doing business in the State of California employing approximately 35,000+ employees. Radio Shack Corporation has 4480 company stores in the United States and Mexico, 1240 dealer outlets worldwide and over 940 wireless phone kiosks.
3. RadioShack Corporation is a multifaceted, multibillion dollar company, and one of the nation's largest retailers of consumer electronics.
4. Defendant Donna O'Campo was Defendant's regional manager at the time all acts occurred herein.
5. At all the pertinent times mentioned in this complaint, Defendants acted with the intent to cause a tortuous effect within the State of California, to the Plaintiff, within the State of California.
6. Defendants are directly liable for the harassing conduct of their supervisors, managers, division heads and other employees and agents.
7. Defendants are directly liable for the discriminatory and retaliatory conduct of their division heads, managers, supervisors and employees agents.
8. Plaintiffs are ignorant of the true names or capacities of the defendants sued here under the fictitious names DOES 1 through DOES 100. Plaintiffs are informed and believe that each of DOE defendants was responsible in some manner for the occurrences and injuries alleged in this Complaint.

1 9. At all times mentioned in the causes of action into which this paragraph is  
2 incorporated by reference, each and every defendant was the agent or employee of  
3 each and every other defendant.  
4

5 10. All acts complained of herein occurred in the City and County of san Francisco,  
6 California.

7 **EXHAUSTION OF ADMINISTRATIVE REMEDIES**

8 11. Plaintiff Frank Allen has exhausted all applicable administrative remedies.  
9  
10 Plaintiff Allen has received two Right to Sue letters from the California  
11 Department of Fair Employment and Housing. The right to sue letter against  
12 Defendant RadioShack Corporation is dated November 17, 2010 and the right to  
13 sue against Defendant Donna O'Campo is dated February 23, 2011.  
14

15 **STATEMENT OF FACTS**

16 12. Plaintiff Frank Allen is 56 years old African American male  
17 ~~13~~ Prior to Plaintiff's employment with the Defendant, Plaintiff served as a Marine  
18 Lance Corporal in the United Marine Corp.  
19 14. Fourteen years ago, in December 1997 Plaintiff Allen was hired by Defendant  
20 Radio Shack as an Assistant Manager. Plaintiff worked at the Van Ness and  
21 Market location.  
22 16. On or about March 1998, Plaintiff was promoted to Manager and was transferred  
23 to Store 3830 at 938 Market Street, where he has worked for the last 12 years.  
24 17. Store 3830 is located in the Tenderloin district of San Francisco. Plaintiff loved his  
25 job and the store location. He built up this location's sales from a \$600,000 store to  
26 a \$1,400,000 store, due to his incredible ability, talent and rare form of  
27 salesmanship. Plaintiff was well known, liked and respected in the community.  
28

- 1 18. For over 13 years Plaintiff had a stellar performance review. Over the years  
2 plaintiff earned several awards and bonus' based on his performance. For the year  
3 2009, Plaintiff's daily sales were so high at his store that he was awarded the # 3  
4 store manager of the entire Northwest District, out of about 1500 managers. Three  
5 out of fifteen hundred managers.
- 6 19. Over the past five years, Plaintiff earned an average of \$60,000 thousand dollars a  
7 year.
- 8 20. On or about, December of 2009, Greg Pappas the area Vice-President entered the  
9 store with defendant Donna O'Campo, the Human Resources Manager and the  
10 President of Loss Prevention. Mr. Pappas was immediately confrontational with  
11 the plaintiff. He wanted to know, among other things, how long plaintiff had  
12 been employed by Radio Shack. After plaintiff answered him, Pappas looked at  
13 him from head to toe and told Plaintiff, **"you may have a year left with Radio**  
14 **Shack. You have been in charge of the whole store for awhile. You MAY have**  
15 **another year"**. Plaintiff was stunned by this threat of termination. For 13 years  
16 Plaintiff was a stellar employee, until Defendant's new management decided he  
17 did not "fit the right image".
- 18 21. Plaintiff immediately made a formal complaint about Mr. Pappas' comments and  
19 behavior, to his then District Manager Hanni. Plaintiff also made a complaint  
20 about Pappas at the next manager's meeting, where district managers Hanni and  
21 Defendant O' Campo were present. There were several managers at this meeting  
22 from all over California.
- 23 22. A month later, in January of 2010, Defendant Donna O' Campo was named as  
24 Plaintiff's new District Manager. She replaced District manager Hanni. Defendant  
25 O'Campo started working as District manager in or around mid-February 2010.
- 26 23. On March 23rd, 2010, about one month after becoming District Manager  
27 Defendant O'Campo, out of the blue, came into the store and wrote plaintiff up  
28 for "cash shortages" that allegedly happened a YEAR prior, under the previous

1 District Manager Hanni . To be written up for the first time in his 13 year career  
2 for what basically is a criminal act, stunned the plaintiff and caused his emotional  
3 distress.

4 Plaintiff Allen had NEVER been written up in the entire 13 years as an  
5 employee of Defendant Radio Shack Corporation.

6 24. On March 29th, 2010, Defendant O' Campo called Plaintiff and told him+ that she  
7 was coming down for lockinpegs. Lockinpegs are pegs used to secure  
8 merchandise to display. Defendant O'Campo told Plaintiff Allen, *"you don't fit*  
9 *the image that Radio Shack wants. You don't have the right people in this store.*  
10 *You need to upgrade your employees."* Defendants were determined to terminate  
11 Plaintiff because he does not "fit the image" that Radio Shack wanted.

12 25. Plaintiff was stunned by this comment and knew that the 'image' she was talking  
13 about was based on his race and age and the race of his employees.

14 26. Plaintiff is a 56 year old African American. **His employee staff at that time**  
15 **consisted of three African Americans, two Hispanics and one Caucasian.**

16 27. Defendant O' Campo told Plaintiff to set up interviews for her and she would  
17 come in and interview applicants for the new staff that he, plaintiff was suppose to  
18 terminate because *"they don't fit the image"*. Once the person was "acceptable" to  
19 defendant O' Campo the present employees would be fired. **Defendant O'Campo**  
20 **was directing Plaintiff to do an illegal act, ie getting rid of the African American**  
21 **and Hispanic employees.**

22 28. Plaintiff was very concerned and defended himself and his staff by reminding  
23 Defendant O' Campo his excellent staff was excellent and of the fact that his store  
24 is one of the best selling stores in the West.

25 29. Defendant O'Campo repeated that plaintiff and his staff *"did not fit the image"*  
26 that Defendants now wanted.

27 30. Defendant O'Campo was referring to plaintiff's race and the race of the  
28 employees.

- 1 31. Six days later on April 4th, 2010, Ms. O' Campo returned to the store and told  
2 plaintiff "if you don't get rid of your people I will get rid of you".
- 3 32. Nine days later, on the evening April 13<sup>th</sup>, 2010, Plaintiff had left the store to make  
4 a bank deposit and then went home as he did daily. Plaintiff had left \$120 in his  
5 desk drawer as per custom and practice should a customer need change. When  
6 plaintiff left the store that evening, the drawer was locked. After plaintiff left,  
7 Defendant O' Campo returned to the store. Rosetta, an employee of Defendant  
8 Radio Shack, who had a key to the drawer, had just sold some computers and had  
9 opened the cash drawer to make some change.
- 10 33. Defendant O'Campo began going through plaintiff's desk and became angry that  
11 the cash drawer was not locked. Rosetta, who was very distressed, called her boss,  
12 the Plaintiff and informed him that defendant O'Campo was going through his  
13 desk.
- 14 34. The next day Plaintiff called Defendant O'Campo. Defendant O' Campo accused  
15 Plaintiff of leaving the cash drawer open. Rosetta had told O'Campo that the she  
16 had unlocked the drawer because she had just opened the drawer to make change  
17 for a purchase.
- 18 35. Plaintiff told Defendant O' Campo that he locked the drawer when he left the store  
19 the day before and that Rosetta had a key if she needed to get change for a  
20 customer. He again explained that when he left the store the previous evening at  
21 5:30pm the drawer was locked. Defendant O' Campo told Plaintiff that she would  
22 check with her boss and let him know what the next step would be.
- 23 36. Plaintiff and defendant O'Campo discussed getting a lock for the door going to the  
24 office. O'campo said she would get a lock. Plaintiff then emailed O'Campo  
25 reminding her of the lock for the door, but she never replied and did not purchase  
26 a lock for the door.
- 27 37. Two weeks later, on April 27th, 2010, Defendant O' Campo returned to the store  
28 with the manager of loss prevention. Defendant O' Campo stated to Plaintiff "give

1 me your keys, we are going to let you go for not taking care of Radio Shack  
2 merchandise".

3 38. Plaintiff Allen was stunned. He replied, "I have the best inventory in the  
4 district, what is really going on here, it's not about the merchandise? Why are  
5 you really firing me?" Defendant O' Campo stated, "sue me".

6 39. Plaintiff was asked to leave the store he had successfully managed for 12 years.

7 40. Plaintiff asked Defendant O'Campo for something in writing stating the reason for  
8 his termination. Defendant O'Campo told him he would be would be receiving  
9 something in the mail.

10 41. To this day, Plaintiff Allen has not received a termination letter or any  
11 correspondence from defendant Radio Shack after 13 years of loyal and stellar  
12 service.

13 42. The next day, Plaintiff Allen called Defendant's Human Resources in San Ramon  
14 and told the lady that Radio Shack terminated me based "on who I am". Human  
15 Resources told Plaintiff that they would stand by the managers decision.

16 43. Plaintiff then called Fort Worth Texas and asked for Human resources so that he  
17 could make his complaint, and they referred him back to San Ramon.

18 44. Plaintiff did" not fit "the new Radio Shack non African American image and as a  
19 result he was terminated. A non African American twenty three year old replaced  
20 him. In fact, all of the employees were replaced with non-African American s and  
21 non-Hispanic employees under 40 years old.

22 45. For the year 2009, Plaintiff was voted manager of the month in the North West  
23 District for 11 out of the 12 months.

24 46. A month or so later two African American employees were terminated, the one  
25 Hispanic employee was terminated. The ONLY employee who was NOT  
26 terminated was the Caucasian employee. He is still there.  
27  
28

1 47. After 13 years of loyal and stellar service, plaintiff was replaced with a 23 year old  
2 non-African American manager. The 2 other African Americans employees were  
3 replaced with non-African American employees in their twenties.

4 48. On April 29, 2010 Plaintiff was contacted by a Radio Shack Manager who informed  
5 him that the Manager who replaced Plaintiff knew she would be taking Plaintiff's  
6 job a month prior to Plaintiff's termination.

7 49. One month prior to Plaintiff's termination, Defendants already had a 23 year old  
8 non-African American employee who fit the new Radio shack image, ready and  
9 waiting to replace Plaintiff.

10 **FIRST CAUSE OF ACTION**

11 **Disparate Treatment in Violation of FEHA Based on RACE and National Origin**  
12 **Cal. Govt. Code Sections 12900 et. seq.**  
13 **(As to All Defendants)**

14 50. Plaintiff realleges and incorporates paragraphs 1 through 49 with the same force  
15 and effect as if fully pleaded at length herein.

16 51. Jurisdiction in this court is invoked pursuant to **California Government Code § §**  
17 **12900, 12921, 12926, 12940 and 12965, specifically Sections 12940(a), 12941 and**  
18 **12921(a)** [Collectively referred to as "**FEHA**"]. Defendants are not exempted from  
19 the statutes cited in this paragraph by any local, state or federal laws.  
20

21 52. Defendants regularly employ more than five employees, and are subject to suit  
22 under **FEHA** for conduct prohibited thereby. **Cal. Govt. Code Section 12940**  
23 **(j)(4)(A).**  
24

25 53. The Plaintiff herein is a member of a class protected by **FEHA**. Plaintiff Frank  
26 Allen is African American. Plaintiff was mistreated based on his race and national  
27 origin, including but not limited being subject to being written up and  
28

1 terminated because he "did not fit the image' that Radio Shack now wanted for  
2 their stores. Plaintiff was wrongfully accused of committing a crime. Plaintiff was  
3 treated worse than the non African employees.  
4

5 54. At all times herein relevant, the Plaintiff's job performance was always satisfactory  
6 and was usually excellent.

7 55. Plaintiff has been subjected to discrimination and disparate treatment which  
8 treatment has included but is not limited to the following forms:  
9

10 (A) Plaintiff was wrongfully written up;

11 (B) Plaintiff was threatened by the vice President and the regional  
12 manager;

13 (C) Plaintiff was wrongfully accused of cash shortages and not  
14 protecting property.

15 (D) Defendants created and maintained an intolerable and hostile work  
16 environment for Plaintiff, including wrongful write-ups, confrontations  
17 by the wrong doers, criminal accusations and condoning the  
18 discrimination;

19 (E) Defendants disproportionately scrutinized Plaintiff's conduct;

20 (F) Defendants subjected Plaintiff to less favorable terms and conditions  
21 of his employment based on his age and race and the race of his staff;

22 (G) Defendants threatened Plaintiff that if he did not "upgrade" his  
23 employees he would be terminated;

24 (H) Defendants created and condoned a hostile work environment  
25 leading to Plaintiff's wrongful termination.  
26  
27  
28



1 56. The discriminatory acts described pursuant to the preceding paragraphs are part  
2 of a longstanding, deep-rooted policy and/or practice by the management of  
3 Defendants to discriminate and retaliate against African employees.  
4

5 57. Defendants at all times relevant herein disparately applied its alleged rules to the  
6 Plaintiff.

7 58. The managers of Defendants were either aware of the discrimination described  
8 herein and took no action to prevent it and/or themselves actively participated in  
9 the discrimination. Plaintiff petitioned the management of the Defendants to stop  
10 such discriminatory practices. Because such petitions were ignored, the Plaintiff  
11 was required to file an administrative complaint with the Department of Fair  
12 Employment and Housing, and to initiate the current lawsuit.  
13  
14

15 59. This action is not preempted by the California Workers' Compensation Act  
16 because discrimination is not a risk or condition of employment.  
17

18 60. The acts complained of herein were either approved, condoned or taken by one or  
19 more managing agents of Defendants, each of whom had the authority to make  
20 corporate policy and/or to direct a substantial portion of the Defendants' business.

21 61. Because of the aforesaid acts of Defendants, Plaintiff suffered, and continues to  
22 suffer losses of wages/salary, commissions, renewals, bonuses and other  
23 employee compensation in an amount that is currently un-ascertained. Plaintiff  
24 will therefore request leave of the court to amend this Complaint to state the  
25 amount of all such damages when they have been ascertained, or upon proof at the  
26 time of trial.  
27  
28

1 62. Plaintiff was held up to great derision and embarrassment with fellow workers,  
2 friends, members of the community and family, and have suffered emotional  
3 distress because the Defendants demonstrated to Plaintiff that they would not  
4 recognize nor accept him as an employee solely because of Plaintiff's race and  
5 national origin. Plaintiff is informed and believes that the Defendants and their  
6 management acted deliberately for the purposes of injuring him. Defendants, by  
7 and through the named Defendants' agents and employees, further acted  
8 intentionally and unreasonably because they knew and/or should have known  
9 that their conduct was likely to result in severe mental distress. Plaintiff therefore  
10 seeks damages for such emotional distress in an amount to be proven at time of  
11 trial.  
12  
13  
14

15 63. Because of the wrongful acts of Defendants as herein above alleged, Plaintiff has  
16 been and will in the future be required to employ physicians and surgeons to  
17 examine, treat and care for him and will incur additional medical expenses in an  
18 amount to be proven at the time of trial.  
19

20 64. In doing the acts set forth above, Defendants acted as herein alleged with a  
21 conscious disregard of Plaintiff right to be free from discrimination and/ or  
22 disparate treatment. Defendant acted, as alleged, with the malicious intention of  
23 depriving the Plaintiff of employment opportunities and benefits that must be  
24 accorded to all employees. Defendants have retained and promoted vicious  
25 employees and managers known by it to be prejudiced against Americans of  
26 African descent. This conduct by Defendants was, and is, despicable, cruel and  
27  
28

1 oppressive. Plaintiff is therefore entitled to an award of punitive damages in an  
2 amount to be proven at trial.

3  
4 65. In bringing this action, Plaintiff has been required to retain the services of counsel.

5 Pursuant to **Government Code § 12965(b)**, they are entitled to an award of  
6 attorney fees.

7 **WHEREFORE**, Plaintiffs pray for judgment as more fully set forth herein below.

8  
9 **SECOND CAUSE OF ACTION**

10 Retaliation in Violation of FEHA  
11 Cal. Govt. Code Sections 12900 et. seq.  
12 (As to Defendants RadioShack Corporation)

13 66. Plaintiff realleges and incorporates all of the facts set forth in paragraphs 1 through  
14 49 with the same force and effect as if fully pleaded at length herein.

15 67. Jurisdiction in this court is invoked pursuant to **California Government Code §§**  
16 **12900, 12921, 12926, 12940 and 12965**, specifically **Section 12940(h)** [Collectively  
17 referred to as "**FEHA**"].

18  
19 68. Defendants are not exempted from the statutes cited in this paragraph by any  
20 local, state or federal laws.

21 69. Defendants regularly employ more than five employees, and are subject to suit  
22 under **FEHA** for conduct prohibited thereby.

23  
24 70. At all times herein relevant, Plaintiff's job performance was always satisfactory  
25 and was usually excellent.

26 71. This is an action for damages based on discrimination and harassment against  
27 Plaintiff for having opposed employment practices made unlawful pursuant to the  
28

1 California FAIR EMPLOYMENT AND HOUSING ACT ["FEHA "], i.e., Cal.

2 Gov. Code §§ 12900, 12921, 12926, 12940 and 12965, specifically Section 12940(h).

3  
4 72. Plaintiff has engaged in activity protected by FEHA by repeatedly and persistently  
5 opposing acts by Defendant that violate the FEHA.

6 73. Specifically, Plaintiff has opposed acts he reasonably believes to be discrimination  
7 and harassment based upon race. For example, Plaintiff was threatened and told to  
8 terminate his African American and Hispanic employees because they "did not fit  
9 the image' defendants wanted. Plaintiff was told he needed to "upgrade" his staff.  
10 Plaintiff was threatened that if he did not do this, he would be terminated.

11 Plaintiff, as the Store Manager felt he had a superb and competent staff, which was  
12 reflected by his store's success. Soon after, plaintiff was retaliated against and  
13 terminated. As a direct and proximate result of such opposition, the Defendants  
14 have taken adverse actions against the Plaintiff that have had a significant impact  
15 on his employment status, up to and including his termination.

16  
17 74. Plaintiff is informed and believes and thereon alleges that this cause of action is  
18 not preempted by the California Workers' Compensation Act on the grounds that  
19 retaliation for opposing unlawful discrimination or harassment is not a risk or  
20 condition of his employment.

21  
22 75. As a result of the adverse employment actions by Defendants, including, including  
23 but not limited to constructive termination, Plaintiff has, and continue to, suffer a  
24 loss of wages/salary, benefits, and other forms of compensation in an amount  
25 which is currently unascertained. As a result of the acts of Defendants, the  
26  
27  
28

1 Plaintiff herein also faces a substantial diminution of his future earning capacity in  
2 an amount which is currently unascertained. Plaintiff will therefore request leave  
3 of the court to amend this Complaint to state the amount of all such damages  
4 when he has been ascertained or upon proof at the time of trial.  
5

6 76. As a result of the adverse employment actions by Defendants, the Plaintiff has  
7 been held up to great derision and embarrassment with his fellow workers,  
8 customers, friends, members of the community and families, and has suffered  
9 emotional distress because Defendants have demonstrated to him that they would  
10 not tolerate employees complaining of the illegal employment discrimination and  
11 harassment set forth above. Plaintiff is informed and believes that the Defendants  
12 and its employees, agents and management acted deliberately for the purposes of  
13 injuring him as alleged above. Defendants , by and through their employees,  
14 agents and management, further acted intentionally and unreasonably because  
15 they knew and/or should have known that their conduct was likely to result in  
16 severe mental distress to the Plaintiff. Plaintiff therefore seeks damages for such  
17 emotional distress in an amount to be proven at time of trial.  
18  
19  
20

21 77. Because of the wrongful acts of Defendants as herein above alleged, Plaintiff has  
22 been and will in the future be required to employ physicians and surgeons to  
23 examine, treat and care for them and will incur additional medical expenses in an  
24 amount to be proven at the time of trial.  
25

26 78. In doing the acts as described above, Defendants, by and through their employees,  
27 agents and management knowingly and intentionally retaliated against those  
28

1 among its' employees, specifically the Plaintiff, who protested the discrimination  
 2 and harassment in employment set forth herein. The managing agents of  
 3 Defendants have made conscious decisions to retaliate against the Plaintiff as a  
 4 means of making "an example" of him, in the hopes of deterring other employees  
 5 from coming forward to oppose such illegal activity. In addition, said managing  
 6 agents have knowingly retained and protected vicious employees, including  
 7 agents. This conduct by Defendant was, and is, despicable, cruel and oppressive.  
 8 The Plaintiff is therefore entitled to an award of punitive damages in an amount to  
 9 be proven at trial.  
 10  
 11

12 79. In bringing this action, Plaintiffs have been required to retain the services of  
 13 counsel. Pursuant to **Government Code § 12965(b)**, they are entitled to an award  
 14 of attorney fees.  
 15

16 **WHEREFORE**, Plaintiff prays for judgment as more fully set forth herein below  
 17

### 18 **THIRD CAUSE OF ACTION**

19 Age Discrimination in Violation of FEHA  
 20 Cal. Govt. Code Sections 12900 et. seq.  
 21 (As to All Defendants)

22 80. Plaintiff incorporates by reference all of the facts set forth in paragraphs 1 through  
 23 49 with the same force and effect as if fully pleaded at length herein

24 81. Jurisdiction in this court is invoked pursuant to **California Government Code §§**  
 25 **12900, 12921, 12926, 12940 and 12965** [Collectively referred to as "FEHA"].

26 Defendant is not exempted from the statutes cited in this paragraph by any local,  
 27 stat or federal laws.  
 28

1 82. Defendant regularly employs more than five employees, and is subject to suit  
2 under FEHA for conduct prohibited thereby.

3  
4 83. The plaintiff is a member of a class protected by FEHA. He is 56 years of age.

5 84. At all times herein relevant, Plaintiff's job performance was always satisfactory  
6 and was usually excellent.

7 85. Defendants terminated the employment of Plaintiff as a result of his  
8 Age. For example, after Plaintiff was asked by a Vice president, how long he had  
9 been at Radio Shack, and after looking at plaintiff from Head to toe, told plaintiff  
10 he might "have another Year with Radio Shack". In fact, a couple months later,  
11 after 13 years of loyal service, Plaintiff was terminated and replaced by a non-  
12 African American 23 year old.

13  
14  
15 86. As a result of the aforesaid discriminatory acts, Plaintiff has suffered and is  
16 continuing to suffer a loss of wages/salary, benefits and other employee  
17 compensation in an amount which is currently un-ascertained. Plaintiff faces a  
18 substantial diminution of her future earning capacity in an amount which is  
19 currently un-ascertained. Plaintiff will request leave of the court to amend this  
20 Complaint to state the amount of all such damages when they have been  
21 ascertained, or upon proof at the time of trial.

22  
23  
24 87. As a result of the aforesaid acts of discrimination, Plaintiff has been held up to  
25 great derision and embarrassment with fellow workers, friends, members of the  
26 community and family, and has continued to suffer emotional distress. Plaintiff is  
27  
28

1 informed and believes that the defendant and its management acted deliberately  
2 for the purposes of injuring her.

3 88. Defendant, by and through its managing agents and employees, further acted  
4 intentionally and unreasonably because they knew and/or should have known  
5 that their conduct was likely to result in additional, severe mental distress.  
6 Plaintiff therefore seeks damages for such emotional distress in an amount to be  
7 proven at time of trial.  
8  
9

10 89. Plaintiff is informed and believes and thereon allege that this cause of action is  
11 not preempted by the California Workers' Compensation Act on the grounds that  
12 employment discrimination is not a risk or condition of her employment.  
13

14 90. Because of the wrongful acts of Defendant as herein above alleged, Plaintiff has  
15 been and/ or will in the future be required to employ physicians and mental  
16 health care professionals to examine, treat and care for her and will incur  
17 additional medical expenses in an amount to be proven at the time of trial.  
18

19 91. In doing the acts set forth above, Defendant and its managing agents acted as  
20 herein alleged with a conscious disregard of Plaintiff's right to be free from  
21 discrimination based on age. Defendant acted, as alleged, with the malicious  
22 intention of depriving Plaintiff of employment opportunities and benefits that  
23 must be accorded to all employees regardless of their age. Defendant has retained,  
24 promoted and coddled employees and managers known by it to be vicious in that  
25 they are prejudiced against older employees. This conduct by Defendant was, and  
26  
27  
28



1 is, despicable, cruel and oppressive. The Plaintiff is therefore entitled to an award  
2 of punitive damages in an amount to be proven at trial.

3 92. In bringing this action, Plaintiff has been required to retain the services of  
4 counsel. Pursuant to California Government Code § 12965(b), she is entitled to  
5 and hereby requests an award of attorney fees and costs of suit.  
6

7 WHEREFORE, Plaintiff prays for judgment as more fully set forth herein below.

8 **FOURTH CAUSE OF ACTION**

9 **Harassment In Violation of FEHA**  
10 **(Hostile Work Environment)**  
11 **Cal. Govt. Code Sections 12900 et. seq.**  
12 **(As to all Defendants )**

13 93. Plaintiff realleges and incorporate paragraphs 1 through 49 with the same force  
14 and effect as if fully pleaded at length herein

15 94. Jurisdiction in this court is invoked pursuant to the FAIR EMPLOYMENT AND  
16 HOUSING ACT ["FEHA "], i.e., Gov. Code § § 12900, 12921, 12926, 12940 and  
17 12965, specifically Section 12940 (j).

18 95. Defendants are comprised of entities and/or individuals with an obligation under  
19 the law to assure an environment in which its employees can work freely without  
20 fear of harassment.

21 96. Defendants have allowed, condoned, enabled and refused to prevent the  
22 harassment of Plaintiff, by themselves, agents, managerial, and other employees.

Said harassment included, but is not limited to, the following:

- 23 (A) Making false accusations against the plaintiff:
- 24 (B) Falsely accusing plaintiff of criminal acts
- 25 (C) Threatening Plaintiff with termination when he would not engage  
26 in racial discrimination;
- 27 (D) Verbally threatening Plaintiff with threat of termination;
- 28

- 1 (E) Ongoing excessive and disproportionate scrutiny of Plaintiff
- 2 conduct;
- 3 (F) Defendants at all times creating and condoning a hostile work
- 4 environment for Plaintiff;
- 5 (G) Defendants at all times creating and condoning an intolerable
- 6 work environment for Plaintiff;
- 7 (H) Public humiliation of Plaintiffs by Defendants;
- 8 (I) Racially motivated disrespect toward Plaintiff; and
- 9 (J) Wrongfully Terminating Plaintiff and replacing plaintiff with 23
- 10 year old non-African American.

11 97. The harassment described in the preceding paragraphs and otherwise described  
12 in detail herein was and is so severe and pervasive that the working conditions of  
13 the Plaintiff was altered into a hostile and unsafe work environment.

14 98. The harassment described in the preceding paragraph and otherwise described in  
15 detail herein was and is so severe and pervasive that the working conditions of the  
16 Plaintiff constituted "harassment" of the Plaintiff pursuant to **Cal. Govt. Code**  
17 **Section Section 12940 (j).**

18 99. Repeatedly and persistently at all times relevant herein, the Plaintiff herein  
19 complained to management of the harassment described herein, but such  
20 harassment never and has never ceased.

21 100. As a result of the aforesaid acts of Defendants, Plaintiff has, and continues to  
22 suffer, monetary damages in an amount which is currently unascertained.  
23 Plaintiffs will therefore request leave of the court to amend this Complaint to state  
24  
25  
26  
27  
28

1 the amount of all such damages when they have been ascertained, or upon proof at  
2 the time of trial.

3  
4 101. As a result of the aforesaid racial harassment, the Plaintiff has been held up to  
5 great derision and embarrassment with his fellow workers, customers, friends,  
6 members of the community and families, and has suffered emotional distress  
7 because Defendants demonstrated to him that they would not recognize nor accept  
8 him as an employee solely because of their race and religion and in retaliation for  
9 plaintiff's complaints. Plaintiff is informed and believes that the Defendants and  
10 their management acted deliberately for the purposes of injuring him as alleged  
11 above. Defendants, by and through their managing agents and employees, further  
12 acted intentionally and unreasonably because they knew and/or should have  
13 known that their conduct was likely to result in severe mental distress. Plaintiff  
14 therefore seeks damages for such emotional distress in an amount to be proven at  
15 time of trial.

16  
17  
18  
19 102. Plaintiff is informed and believes and thereon alleges that this cause of action is  
20 not preempted by the California Workers' Compensation Act on the grounds that  
21 harassment is not a risk or condition of Plaintiffs' employment.

22  
23 103. Because of the wrongful acts of Defendants as herein above alleged, Plaintiff  
24 has been and will in the future be required to employ physicians and surgeons to  
25 examine, treat and care for him and will incur additional medical expenses in an  
26 amount to be proven at the time of trial.

1 104. In doing the acts set forth above, Defendants acted as herein alleged with a  
2 conscious disregard of Plaintiff's rights to a non discriminatory work place.  
3 Defendants have acted in utter disregard of their obligations under the law. The  
4 managing agents of Defendants have made conscious decisions to establish and to  
5 allow the existence of a hostile work place. In addition, said managing agents  
6 have knowingly retained and promoted vicious employees, including managers,  
7 known by Defendants to be prejudiced against African American employees and  
8 employees over the age of 40. This conduct by Defendants was, and is, despicable,  
9 cruel and oppressive. The Plaintiff is therefore entitled to an award of punitive  
10 damages in an amount to be proven at trial.  
11

12  
13 105. In bringing this action, Plaintiff has been required to retain the services of  
14 counsel. Pursuant to Government Code § 12965(b), they are entitled to an award  
15 of attorney fees.  
16

17 **WHEREFORE**, Plaintiff prays for judgment as more fully set forth herein below  
18

19 **FIFTH CAUSE OF ACTION**

20 **Wrongful Termination in Violation of Public Policy**

21 **(AS TO Defendants Radio Shack)**

22 106. The facts alleged in paragraphs 1 through 49 are hereby incorporated by  
23 reference with the same force and effect as if fully pleaded at length herein.

24 107. Jurisdiction is invoked in this court pursuant to the California Supreme Court  
25 case of Tameny v. Atlantic Richfield Company (1980) 27 Cal. 3d 167.

26 108. There is a fundamental and well established public policy of this state against  
27 discrimination in employment on the basis of race, age, sex and national origin.  
28

1 Said public policy is embodied inter alia in Article I, Section 8 of the California  
2 Constitution.

3 109. There is also a fundamental and well established public policy of this state  
4 against discrimination on the basis of age and race. That public policy is also  
5 embodied inter alia in the California Fair Employment and Housing Act.

6 110. Defendants have a long standing policy and practice of making personnel  
7 decisions on the basis of factors prohibited by the public policies of this state.

8 111. The policy and practice described in paragraphs -- was applied specifically to  
9 the Plaintiff in this case as follows:

10  
11 (A). Termination of the employment of Plaintiff Frank Allen based upon  
12 race;

13 (B). Termination of the employment of Plaintiff Frank Allen for race  
14 discrimination in defense of others; and

15 (C). Termination of the employment of Plaintiff Frank Allen based upon  
16 Age;

17 112. As a result of the aforesaid acts of Defendants, Plaintiff has suffered, and is  
18 continuing to suffer, a loss of wages/salary, benefits, and other forms of  
19 compensation in an amount which is currently unascertained. As a result of  
20 the discriminatory and retaliatory acts of Defendants the Plaintiff herein faces  
21 substantial diminution of their future earning capacity in an amount which is  
22 currently unascertained. Plaintiff will therefore request leave of the court to  
23 amend this Complaint to state the amount of all such damages when they have  
24 been ascertained or upon proof at the time of trial.

25 113. As a result of the aforesaid acts of discrimination and retaliation in  
26 employment, the Plaintiff has been held up to great derision and  
27 embarrassment with their fellow workers, customers, friends, members of the  
28 community and families, and has suffered emotional distress because

1 Defendants have demonstrated to them that it will not recognize nor accept  
2 them as employees solely on their merits but rejects them based upon  
3 prohibited classifications described above.

4 114. Plaintiff is informed and believes that the Defendant and its management acted  
5 deliberately for the purposes of injuring them as alleged above.

6 115. Defendants, by and through their managing agents and employees, further  
7 acted intentionally and unreasonably because it knew and/or should have  
8 known that its conduct was likely to result in severe mental distress. Plaintiff  
9 therefore seeks damages for such emotional distress in an amount to be proven  
10 at time of trial.

11 116. Because of the wrongful acts of Defendants as herein above alleged, Plaintiff  
12 has been and will in the future be required to employ physicians and surgeons  
13 to examine, treat and care for them and will incur additional medical expenses  
14 in an amount to be proven at the time of trial.

15 117. In doing the acts set forth above, Defendants acted as alleged intentionally and  
16 with a conscious disregard of the Plaintiff's right to equal employment  
17 opportunities and to be free from discrimination on the basis of prohibited  
18 factors. Defendants have acted and continue to act in utter disregard of its  
19 obligations under the public policy of this state. Defendants have made  
20 conscious decisions to discriminate against its employees for reasons  
21 prohibited by law, specifically the Plaintiff herein, by treating him adversely in  
22 the manner described above.

23 118. In addition, said managing agents have retained, protected, promoted and  
24 coddled vicious employees known by it to discriminate against its employees.  
25 This conduct by Defendants was, and is, despicable, cruel and oppressive. The  
26 Plaintiff is therefore entitled to an award of punitive damages in an amount to  
27 be proven at trial.  
28

**SIXTH CAUSE OF ACTION**

Intentional Infliction of Emotional Distress - Common Law

(As to All Defendants)

126. Plaintiff realleges and incorporates paragraphs 1 through 49 with the same force and effect as if full pleaded at length herein.

127. This is an action for damages pursuant to the common law of the State of California as mandated by the California Supreme Court in the decision of Rojo v. Kliger, (1990) 52 Cal. 3d 65.

128. The acts of Defendants and agents, including managers of Defendant, as described above, were extreme and outrageous. This includes, but is not limited to, the following:

(A) Wrongful termination based on Age and Race;

(B) Falsely accusing plaintiff of criminal acts;

(C) Plaintiff was threatened and told to terminate his African American and Hispanic employees because they "did not fit the image" defendants wanted. Plaintiff was told he needed to "upgrade" his staff. Plaintiff was threatened that if he did not do this, he would be terminated. Plaintiff, as the Store Manager felt he had a superb and competent staff, which was reflected by his store's success. Plaintiff, rightfully and loyally defended his staff. Soon after, plaintiff was retaliated against and terminated;

(D) Hostile work environment,

WHEREFORE, Plaintiff prays for judgment as more fully set forth herein below.

**DEMAND FOR JURY TRIAL**

Plaintiff Frank Allen hereby demands trial of this matter by jury.

**PRAYER FOR RELIEF**

**WHEREFORE**, Plaintiff Frank Allen prays for relief as follows:

129. For compensatory damages;

130. For monetary damages to compensate for the emotional distress suffered by Plaintiff;

131. For punitive damages in an amount appropriate to punish Defendants for their wrongful and malicious conduct and to set an example for others;

132. For prejudgment and post-judgment interest accrued to date;

133. For costs of suit incurred herein;

134. For attorneys fees and costs pursuant to **California Government Code § 12965(b)** and other provisions of law; and

135. For such other relief that this Court may deem just and proper.

Dated:

LAW OFFICES OF MAYOR JOSEPH L.  
ALIOTO & ANGELA ALIOTO

By: 

ANGELA ALIOTO

Attorney for Plaintiff Frank Allen



**EXHIBIT B**

6-21-11

first legal

4156261331

1 Tracy Thompson (SBN 88173)  
 2 *tt@millerlawgroup.com*  
 3 Adam J. Tullman (SBN 235694)  
 4 *ajt@millerlawgroup.com*  
 5 MILLER LAW GROUP  
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 8 San Francisco, CA 94104  
 9 Tel. (415) 464-4300  
 10 Fax (415) 464-4336

11 Attorneys for Defendant  
 12 **RADIO SHACK CORPORATION**

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SUPERIOR COURT OF THE STATE OF CALIFORNIA  
 SAN FRANCISCO COUNTY SUPERIOR COURT

FRANK ALLEN,

Plaintiff,

v.

RADIO SHACK CORPORATION, DONNA  
 O'CAMPO and Does 1 through 100,

Defendants.

Case No.: CGC-11-511136

**DEFENDANT RADIO SHACK  
 CORPORATION'S ANSWER TO  
 PLAINTIFF'S COMPLAINT**

Complaint filed: May 20, 2011

COPY

MILLER LAW GROUP  
 A PROFESSIONAL CORPORATION  
 SAN FRANCISCO, CALIFORNIA

FAXED

1 Defendant RADIOSHACK CORPORATION hereby answers Plaintiff FRANK  
2 ALLEN's Complaint as follows:

3  
4 **GENERAL DENIAL**

5  
6 Pursuant to Section 431.30(d) of the California Code of Civil Procedure,  
7 Defendant hereby answers the Complaint by generally denying each and every allegation  
8 contained therein. Defendant further denies that Plaintiff has been damaged in any sum  
9 whatsoever, or that Plaintiff is entitled to the relief requested or to any other relief, or that  
10 Plaintiff has sustained any injury, damage, or loss by reason of any act, omission, or  
11 negligence on the part of Defendant, or by reason of any act, omission, or negligence on the  
12 part of any of Defendant's agents, servants, or employees. Defendant further denies that it  
13 is liable to Plaintiff under any theory, including, without limitation, the theories of liability  
14 asserted in the Complaint.

15  
16 **AFFIRMATIVE DEFENSES**

17  
18 Defendant asserts the following affirmative defenses:

19  
20 **FIRST AFFIRMATIVE DEFENSE**

21 **(Statute of Limitations)**

22  
23 As a separate and affirmative defense to each and every cause of action set  
24 forth in Plaintiff's Complaint, Defendant alleges that Plaintiff's claims are barred or limited by  
25 the applicable statute(s) of limitations, including, but not limited to, California Government  
26 Code sections 12960 and 12965(b), and California Code of Civil Procedure sections 335.1  
27 and 340.  
28

**SECOND AFFIRMATIVE DEFENSE****(Exhaustion of Administrative Remedies)**

As a separate and affirmative defense to the First through Fifth causes of action set forth in Plaintiff's Complaint, Defendant alleges that Plaintiff has failed to comply with applicable procedural and administrative prerequisites, including the exhaustion of his administrative remedies with State and/or Federal agencies, the exhaustion of which is a condition precedent to the maintenance of this action.

**THIRD AFFIRMATIVE DEFENSE****(Waiver and Estoppel)**

As a separate and affirmative defense to each and every cause of action set forth in Plaintiff's Complaint, Defendant alleges that Plaintiff, by his acts and omissions, has waived and/or is estopped to allege the matters set forth in the Complaint.

**FOURTH AFFIRMATIVE DEFENSE****(Doctrine of Unclean Hands)**

As a separate and affirmative defense to each and every cause of action set forth in Plaintiff's Complaint, Defendant alleges that Plaintiff is barred from any relief by the doctrine of unclean hands.

**FIFTH AFFIRMATIVE DEFENSE****(Workers' Compensation Preemption)**

As a separate and affirmative defense to each and every cause of action set forth in Plaintiff's Complaint, Defendant alleges that if Plaintiff has suffered physical and/or emotional injury related to his employment with Defendant, his exclusive remedy for such injury is provided by California Labor Code section 3200, *et seq.*, and/or any other workers' compensation laws.

**SIXTH AFFIRMATIVE DEFENSE****(Failure to Mitigate)**

As a separate and affirmative defense to each and every cause of action set forth in Plaintiff's Complaint, Defendant alleges that Plaintiff has failed to mitigate the damages alleged in the Complaint.

**SEVENTH AFFIRMATIVE DEFENSE****(After Acquired Evidence)**

As a separate and affirmative defense to the First through Fifth causes of action set forth in Plaintiff's Complaint, Defendant alleges that any recovery on Plaintiff's Complaint, or any purported claim alleged therein, is barred to the extent that the Defendant has discovered, or will discover, additional evidence indicating that Plaintiff has engaged in conduct before or while employed by Defendant that precludes or limits his assertion of the claims for relief and/or damages presented therein.

**EIGHTH AFFIRMATIVE DEFENSE****(Failure to Use Corrective Measures)**

As a separate and affirmative defense to each and every cause of action set forth in Plaintiff's Complaint, Defendant alleges that Plaintiff is barred from any recovery because Defendant had in place and implemented, in good faith, policies, procedures and other measures that reasonably should have prevented the conduct Plaintiff alleges, and that Plaintiff unreasonably failed to invoke those measures or take other corrective actions to stop the alleged conduct.

**NINTH AFFIRMATIVE DEFENSE****(Defendant's Appropriate Corrective Action)**

As a separate and affirmative defense to each and every cause of action set forth in Plaintiff's Complaint, Defendant alleges that Plaintiff is barred from any recovery because Defendant had implemented one or more policies prohibiting the alleged acts and/or otherwise made good faith efforts to comply with applicable law and took immediate and appropriate corrective action when it became aware of the conduct alleged by Plaintiff.

**TENTH AFFIRMATIVE DEFENSE****(Privilege)**

As a separate and affirmative defense to the Sixth cause of action set forth in Plaintiff's Complaint, Defendant's conduct was privileged.

**RESERVATION OF RIGHTS**

Defendant has not yet completed discovery of all the facts and circumstances regarding the subject matter of the Complaint, and, accordingly, reserves the right to amend, modify, revise or supplement this Answer, and to assert such additional affirmative defenses that may appear and prove applicable during the course of this litigation.

WHEREFORE, Defendant prays for judgment as follows:

1. That Plaintiff take nothing by this action;
2. That the Complaint be dismissed in its entirety with prejudice, and judgment entered in favor of Defendant;
3. That Defendant be awarded its costs of suit;
4. That Defendant be awarded its attorneys' fees according to proof; and
5. That the Court award Defendant such other and further relief as the Court may deem proper.

Dated: June 21, 2011

MILLER LAW GROUP  
A Professional Corporation

By: 

Adam J. Tullman  
Attorneys for Defendant RADIOSHACK  
CORPORATION

4840-6730-1385, v. 1

**PROOF OF SERVICE**

I, Pamela A. Leonard, declare that I am employed at Miller Law Group, A Professional Corporation, whose address is 111 Sutter Street, Suite 700, San Francisco, CA 94104; I am over the age of eighteen (18) years and am not a party to this action. On the below date, by the method noted below, I served the following document(s):

**DEFENDANT RADIOSHACK CORPORATION'S ANSWER TO PLAINTIFF'S COMPLAINT**

on the interested parties in this action by placing a true and correct copy thereof, enclosed in a sealed envelope addressed as follows:

Angela M. Alioto, Esq.  
Angela Mia Veronese, Esq.  
Law Offices of Joseph L. Alioto and  
Angela Alioto  
700 Montgomery Street  
San Francisco, CA 94111-2104

Attorney for Plaintiff: *Frank Allen*

Tel: (415) 434-8700

Fax: (415) 438-4638

☒ **BY MAIL:** By placing a true copy thereof enclosed in a sealed envelope with postage thereon fully prepaid, in the ordinary course of business for collection and mailing on this date at Miller Law Group, 111 Sutter Street, San Francisco, California. I declare that I am readily familiar with the business practice of Miller Law Group for collection and processing of correspondence for mailing with the United States Postal Service and that the correspondence would be deposited with the United States Postal Service that same day in the ordinary course of business.

☒ [State] I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on June 21, 2011 at San Francisco, California.

  
Pamela A. Leonard



**EXHIBIT C**

SUM-100

# SUMMONS (CITACION JUDICIAL)

## NOTICE TO DEFENDANT: (AVISO AL DEMANDADO):

Radio Shack Corporation, Donna O'Campo and Does 1-100

## YOU ARE BEING SUED BY PLAINTIFF:

(LO ESTÁ DEMANDANDO EL DEMANDANTE):

Frank Allen

FOR COURT USE ONLY  
(SOLO PARA USO DE LA CORTE)

**NOTICE!** You have been sued. The court may decide against you without your being heard unless you respond within 30 days. Read the information below.

You have 30 CALENDAR DAYS after this summons and legal papers are served on you to file a written response at this court and have a copy served on the plaintiff. A letter or phone call will not protect you. Your written response must be in proper legal form if you want the court to hear your case. There may be a court form that you can use for your response. You can find these court forms and more information at the California Courts Online Self-Help Center ([www.courtinfo.ca.gov/selfhelp](http://www.courtinfo.ca.gov/selfhelp)), your county law library, or the courthouse nearest you. If you cannot pay the filing fee, ask the court clerk for a fee waiver form. If you do not file your response on time, you may lose the case by default, and your wages, money, and property may be taken without further warning from the court.

There are other legal requirements. You may want to call an attorney right away. If you do not know an attorney, you may want to call an attorney referral service. If you cannot afford an attorney, you may be eligible for free legal services from a nonprofit legal services program. You can locate these nonprofit groups at the California Legal Services Web site ([www.lawhelpcalifornia.org](http://www.lawhelpcalifornia.org)), the California Courts Online Self-Help Center ([www.courtinfo.ca.gov/selfhelp](http://www.courtinfo.ca.gov/selfhelp)), or by contacting your local court or county bar association. **NOTE:** The court has a statutory lien for waived fees and costs on any settlement or arbitration award of \$10,000 or more in a civil case. The court's lien must be paid before the court will dismiss the case. **¡AVISO!** Lo han demandado. Si no responde dentro de 30 días, la corte puede decidir en su contra sin escuchar su versión. Lea la información a continuación.

Tiene 30 DÍAS DE CALENDARIO después de que le entreguen esta citación y papeles legales para presentar una respuesta por escrito en esta corte y hacer que se entregue una copia al demandante. Una carta o una llamada telefónica no lo protegen. Su respuesta por escrito tiene que estar en formato legal correcto si desea que procesen su caso en la corte. Es posible que haya un formulario que usted puede usar para su respuesta. Puede encontrar estos formularios de la corte y más información en el Centro de Ayuda de las Cortes de California ([www.sucorte.ca.gov](http://www.sucorte.ca.gov)), en la biblioteca de leyes de su condado o en la corte que le quede más cerca. Si no puede pagar la cuota de presentación, pida al secretario de la corte que le dé un formulario de exención de pago de cuotas. Si no presenta su respuesta a tiempo, puede perder el caso por incumplimiento y la corte le podrá quitar su sueldo, dinero y bienes sin más advertencia.

Hay otros requisitos legales. Es recomendable que llame a un abogado inmediatamente. Si no conoce a un abogado, puede llamar a un servicio de remisión a abogados. Si no puede pagar a un abogado, es posible que cumpla con los requisitos para obtener servicios legales gratuitos de un programa de servicios legales sin fines de lucro. Puede encontrar estos grupos sin fines de lucro en el sitio web de California Legal Services, ([www.lawhelpcalifornia.org](http://www.lawhelpcalifornia.org)), en el Centro de Ayuda de las Cortes de California, ([www.sucorte.ca.gov](http://www.sucorte.ca.gov)) o poniéndose en contacto con la corte o el colegio de abogados locales. **AVISO:** Por ley, la corte tiene derecho a reclamar las cuotas y los costos exentos por imponer un gravamen sobre cualquier recuperación de \$10,000 o más de valor recibida mediante un acuerdo o una concesión de arbitraje en un caso de derecho civil. Tiene que pagar el gravamen de la corte antes de que la corte pueda desechar el caso.

The name and address of the court is:  
(El nombre y dirección de la corte es):

Superior Court of California, County of San Francisco  
400 McAllister, San Francisco, CA 94102

The name, address, and telephone number of plaintiff's attorney, or plaintiff without an attorney, is:  
(El nombre, la dirección y el número de teléfono del abogado del demandante, o del demandante que no tiene abogado, es):  
Angela Alioto (SBN 130328), 700 Montgomery Street, San Francisco, CA 94111, (415)434-8700

CASE NUMBER:

(Número del Caso):

C GC - 11 - 511136

DATE: MAY 20 2011  
(Fecha)

Clerk, by  
(Secretario)

P. NATI

Deputy  
(Adjunto)

(For proof of service of this summons, use Proof of Service of Summons (form POS-010).)

(Para prueba de entrega de esta citación use el formulario Proof of Service of Summons, (POS-010)).

### NOTICE TO THE PERSON SERVED: You are served

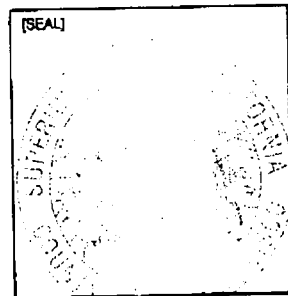
1. ☐ as an individual defendant.  
2. ☐ as the person sued under the fictitious name of (specify):

BY FAX

3. ☐ on behalf of (specify):

- under: ☐ CCP 416.10 (corporation) ☐ CCP 416.60 (minor)  
☐ CCP 416.20 (defunct corporation) ☐ CCP 416.70 (conservatee)  
☐ CCP 416.40 (association or partnership) ☐ CCP 416.90 (authorized person)  
☐ other (specify):

4. ☐ by personal delivery on (date):



SUM-100

**SUMMONS**  
**(CITACION JUDICIAL)**

**NOTICE TO DEFENDANT:**  
**(AVISO AL DEMANDADO):**

Radio Shack Corporation, Donna O'Campo and Does 1-100

**YOU ARE BEING SUED BY PLAINTIFF:**  
**(LO ESTÁ DEMANDANDO EL DEMANDANTE):**

Frank Allen

FOR COURT USE ONLY  
(SOLO PARA USO DE LA CORTE)

**NOTICE!** You have been sued. The court may decide against you without your being heard unless you respond within 30 days. Read the information below.

You have 30 CALENDAR DAYS after this summons and legal papers are served on you to file a written response at this court and have a copy served on the plaintiff. A letter or phone call will not protect you. Your written response must be in proper legal form if you want the court to hear your case. There may be a court form that you can use for your response. You can find these court forms and more information at the California Courts Online Self-Help Center ([www.courtinfo.ca.gov/selfhelp](http://www.courtinfo.ca.gov/selfhelp)), your county law library, or the courthouse nearest you. If you cannot pay the filing fee, ask the court clerk for a fee waiver form. If you do not file your response on time, you may lose the case by default, and your wages, money, and property may be taken without further warning from the court.

There are other legal requirements. You may want to call an attorney right away. If you do not know an attorney, you may want to call an attorney referral service. If you cannot afford an attorney, you may be eligible for free legal services from a nonprofit legal services program. You can locate these nonprofit groups at the California Legal Services Web site ([www.lawhelpcalifornia.org](http://www.lawhelpcalifornia.org)), the California Courts Online Self-Help Center ([www.courtinfo.ca.gov/selfhelp](http://www.courtinfo.ca.gov/selfhelp)), or by contacting your local court or county bar association. NOTE: The court has a statutory lien for waived fees and costs on any settlement or arbitration award of \$10,000 or more in a civil case. The court's lien must be paid before the court will dismiss the case. **¡AVISO!** Lo han demandado. Si no responde dentro de 30 días, la corte puede decidir en su contra sin escuchar su versión. Lea la información a continuación.

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Hay otros requisitos legales. Es recomendable que llame a un abogado inmediatamente. Si no conoce a un abogado, puede llamar a un servicio de remisión a abogados. Si no puede pagar a un abogado, es posible que cumpla con los requisitos para obtener servicios legales gratuitos de un programa de servicios legales sin fines de lucro. Puede encontrar estos grupos sin fines de lucro en el sitio web de California Legal Services, ([www.lawhelpcalifornia.org](http://www.lawhelpcalifornia.org)), en el Centro de Ayuda de las Cortes de California, ([www.sucorte.ca.gov](http://www.sucorte.ca.gov)) o poniéndose en contacto con la corte o el colegio de abogados locales. **AVISO:** Por ley, la corte tiene derecho a reclamar las cuotas y los costos extendidos por imponer un gravamen sobre cualquier recuperación de \$10,000 o más de valor recibida mediante un acuerdo o una concesión de arbitraje en un caso de derecho civil. Tiene que pagar el gravamen de la corte antes de que la corte pueda desahogar el caso.

The name and address of the court is:  
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400 McAllister, San Francisco, CA 94102

The name, address, and telephone number of plaintiff's attorney, or plaintiff without an attorney, is:

(El nombre, la dirección y el número de teléfono del abogado del demandante, o del demandante que no tiene abogado, es):  
Angela Alioto (SBN 130328), 700 Montgomery Street, San Francisco, CA 94111, (415)434-8700

CASE NUMBER:  
(Número del caso)

CGC-11-511136

DATE: MAY 20 2011  
(Fecha)

CLERK OF THE COURT

Clerk, by  
(Secretario)

P. NATT

Deputy  
(Adjunto)

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(Para prueba de entrega de esta citación use el formulario Proof of Service of Summons, (POS-010)).

(SEAL)

**NOTICE TO THE PERSON SERVED:** You are served

1. ☐ as an individual defendant.  
2. ☐ as the person sued under the fictitious name of (specify):

3. ☒ on behalf of (specify): **RADIO SHACK CORPORATION**  
under: ☒ CCP 416.10 (corporation) ☐ CCP 416.60 (minor)  
☐ CCP 416.20 (defunct corporation) ☐ CCP 416.70 (conservatee)  
☐ CCP 416.40 (association or partnership) ☐ CCP 416.80 (authorized person)  
☐ other (specify):

4. ☒ by personal delivery on (date): **5/26/11**

**BY FAX**

**ENDORSED  
FILED**  
San Francisco County Superior Court

MAY 20 2011

CLERK OF THE COURT  
BY: PARAM NATT  
Deputy Clerk

1 Angela M. Alioto, (SBN 130328)  
2 Angela Mia Veronese, (SBN 269942)  
3 LAW OFFICES OF JOSEPH L. ALIOTO  
4 AND ANGELA ALIOTO  
5 700 Montgomery Street  
6 San Francisco, CA 94111-2104  
7 Telephone: (415) 434-8700  
8 Facsimile: (415) 438-4638

9 Attorneys for Plaintiff Frank Allen

10 **SUPERIOR COURT OF CALIFORNIA**

11 **SAN FRANCISCO COUNTY**

12 **UNLIMITED JURISDICTION**

13 **CGC-11-511136**

14 **CASE NO.**

15 **COMPLAINT FOR DAMAGES FOR:**

- 16 1. Disparate Treatment Based on  
17 Race/National Origin (FEHA);  
18 2. Retaliation (FEHA);  
19 3. Discrimination Based on Age.  
20 4. Hostile Work Environment  
21 (Harassment) (FEHA);  
22 5. Wrongful Termination in  
23 Violation of Public Policy  
24 6. Intentional Infliction of Emotional  
25 Distress

26 **JURY TRIAL DEMANDED**

27 **BY FAX**

28 Plaintiff Frank Allen complains against Defendants Radio Shack Corporation,  
Donna O'Campo and Does 1-100, and demands a trial by jury of all issues and for  
causes of alleged actions:

**PARTIES AND JURISDICTION**

1. At the pertinent times mentioned in this complaint, Plaintiff Frank Allen is a resident of the State of California, County of Alameda.
2. Defendant Radio Shack Corporation is an employer doing business in the State of California employing approximately 35,000+ employees. Radio Shack Corporation has 4480 company stores in the United States and Mexico, 1240 dealer outlets worldwide and over 940 wireless phone kiosks.
3. RadioShack Corporation is a multifaceted, multibillion dollar company, and one of the nation's largest retailers of consumer electronics.
4. Defendant Donna O'Campo was Defendant's regional manager at the time all acts occurred herein.
5. At all the pertinent times mentioned in this complaint, Defendants acted with the intent to cause a tortuous effect within the State of California, to the Plaintiff, within the State of California.
6. Defendants are directly liable for the harassing conduct of their supervisors, managers, division heads and other employees and agents.
7. Defendants are directly liable for the discriminatory and retaliatory conduct of their division heads, managers, supervisors and employees agents.
8. Plaintiffs are ignorant of the true names or capacities of the defendants sued here under the fictitious names DOES 1 through DOES 100. Plaintiffs are informed and believe that each of DOE defendants was responsible in some manner for the occurrences and injuries alleged in this Complaint.

1 9. At all times mentioned in the causes of action into which this paragraph is  
2 incorporated by reference, each and every defendant was the agent or employee of  
3 each and every other defendant.  
4

5 10. All acts complained of herein occurred in the City and County of san Francisco,  
6 California.  
7

8 **EXHAUSTION OF ADMINISTRATIVE REMEDIES**

9 11. Plaintiff Frank Allen has exhausted all applicable administrative remedies.

10 Plaintiff Allen has received two Right to Sue letters from the California  
11 Department of Fair Employment and Housing. The right to sue letter against  
12 Defendant RadioShack Corporation is dated November 17, 2010 and the right to  
13 sue against Defendant Donna O'Campo is dated February 23, 2011.  
14

15 **STATEMENT OF FACTS**

16 12. Plaintiff Frank Allen is 56 years old African American male

17 13. Prior to Plaintiff's employment with the Defendant, Plaintiff served as a Marine  
18 Lance Corporal in the United Marine Corp.

19 14. Fourteen years ago, in December 1997 Plaintiff Allen was hired by Defendant  
20 Radio Shack as an Assistant Manager. Plaintiff worked at the Van Ness and  
21 Market location.

22 16. On or about March 1998, Plaintiff was promoted to Manager and was transferred  
23 to Store 3830 at 938 Market Street, where he has worked for the last 12 years.

24 17. Store 3830 is located in the Tenderloin district of San Francisco. Plaintiff loved his  
25 job and the store location. He built up this location's sales from a \$600,000 store to  
26 a \$1,400,000 store, due to his incredible ability, talent and rare form of  
27 salesmanship. Plaintiff was well known, liked and respected in the community.  
28

- 1 18. For over 13 years Plaintiff had a stellar performance review. Over the years  
2 plaintiff earned several awards and bonus' based on his performance. For the year  
3 2009, Plaintiff's daily sales were so high at his store that he was awarded the # 3  
4 store manager of the entire Northwest District, out of about 1500 managers. Three  
5 out of fifteen hundred managers.
- 6 19. Over the past five years, Plaintiff earned an average of \$60,000 thousand dollars a  
7 year.
- 8 20. On or about, December of 2009, Greg Pappas the area Vice-President entered the  
9 store with defendant Donna O'Campo, the Human Resources Manager and the  
10 President of Loss Prevention. Mr. Pappas was immediately confrontational with  
11 the plaintiff. He wanted to know, among other things, how long plaintiff had  
12 been employed by Radio Shack. After plaintiff answered him, Pappas looked at  
13 him from head to toe and told Plaintiff, "you may have a year left with Radio  
14 Shack. You have been in charge of the whole store for awhile. You MAY have  
15 another year". Plaintiff was stunned by this threat of termination. For 13 years  
16 Plaintiff was a stellar employee, until Defendant's new management decided he  
17 did not "fit the right image".
- 18 21. Plaintiff immediately made a formal complaint about Mr. Pappas' comments and  
19 behavior, to his then District Manager Hanni. Plaintiff also made a complaint  
20 about Pappas at the next manager's meeting, where district managers Hanni and  
21 Defendant O' Campo were present. There were several managers at this meeting  
22 from all over California.
- 23 22. A month later, in January of 2010, Defendant Donna O' Campo was named as  
24 Plaintiff's new District Manager. She replaced District manager Hanni. Defendant  
25 O'Campo started working as District manager in or around mid-February 2010.
- 26 23. On March 23rd, 2010, about one month after becoming District Manager  
27 Defendant O'Campo, out of the blue, came into the store and wrote plaintiff up  
28 for "cash shortages" that allegedly happened a YEAR prior, under the previous

1 District Manager Hanni . To be written up for the first time in his 13 year career  
2 for what basically is a criminal act, stunned the plaintiff and caused his emotional  
3 distress.

4 Plaintiff Allen had NEVER been written up in the entire 13 years as an  
5 employee of Defendant Radio Shack Corporation.

6 24. On March 29th, 2010, Defendant O' Campo called Plaintiff and told him+ that she  
7 was coming down for lockinpegs. Lockinpegs are pegs used to secure  
8 merchandise to display. Defendant O'Campo told Plaintiff Allen, "*you don't fit*  
9 *the image that Radio Shack wants. You don't have the right people in this store.*  
10 *You need to upgrade your employees.*" Defendants were determined to terminate  
11 Plaintiff because he does not "fit the image" that Radio Shack wanted.

12 25. Plaintiff was stunned by this comment and knew that the 'image' she was talking  
13 about was based on his race and age and the race of his employees.

14 26. Plaintiff is a 56 year old African American. **His employee staff at that time**  
15 **consisted of three African Americans, two Hispanics and one Caucasian.**

16 27. Defendant O' Campo told Plaintiff to set up interviews for her and she would  
17 come in and interview applicants for the new staff that he, plaintiff was suppose to  
18 terminate because "**they don't fit the image**". Once the person was "acceptable" to  
19 defendant O' Campo the present employees would be fired. **Defendant O'Campo**  
20 **was directing Plaintiff to do an illegal act, ie getting rid of the African American**  
21 **and Hispanic employees.**

22 28. Plaintiff was very concerned and defended himself and his staff by reminding  
23 Defendant O' Campo his excellent staff was excellent and of the fact that his store  
24 is one of the best selling stores in the West.

25 29. Defendant O'Campo repeated that plaintiff and his staff "did not fit the image"  
26 that Defendants now wanted.

27 30. Defendant O'Campo was referring to plaintiff's race and the race of the  
28 employees.



- 1 31. Six days later on April 4th, 2010, Ms. O' Campo returned to the store and told  
2 plaintiff "if you don't get rid of your people I will get rid of you".
- 3 32. Nine days later, on the evening April 13<sup>th</sup>, 2010, Plaintiff had left the store to make  
4 a bank deposit and then went home as he did daily. Plaintiff had left \$120 in his  
5 desk drawer as per custom and practice should a customer need change. When  
6 plaintiff left the store that evening, the drawer was locked. After plaintiff left,  
7 Defendant O' Campo returned to the store. Rosetta, an employee of Defendant  
8 Radio Shack, who had a key to the drawer, had just sold some computers and had  
9 opened the cash drawer to make some change.
- 10 33. Defendant O'Campo began going through plaintiff's desk and became angry that  
11 the cash drawer was not locked. Rosetta, who was very distressed, called her boss,  
12 the Plaintiff and informed him that defendant O'Campo was going through his  
13 desk.
- 14 34. The next day Plaintiff called Defendant O'Campo. Defendant O' Campo accused  
15 Plaintiff of leaving the cash drawer open. Rosetta had told O'Campo that she  
16 had unlocked the drawer because she had just opened the drawer to make change  
17 for a purchase.
- 18 35. Plaintiff told Defendant O' Campo that he locked the drawer when he left the store  
19 the day before and that Rosetta had a key if she needed to get change for a  
20 customer. He again explained that when he left the store the previous evening at  
21 5:30pm the drawer was locked. Defendant O' Campo told Plaintiff that she would  
22 check with her boss and let him know what the next step would be.
- 23 36. Plaintiff and defendant O'Campo discussed getting a lock for the door going to the  
24 office. O'campo said she would get a lock. Plaintiff then emailed O'Campo  
25 reminding her of the lock for the door, but she never replied and did not purchase  
26 a lock for the door.
- 27 37. Two weeks later, on April 27th, 2010, Defendant O' Campo returned to the store  
28 with the manager of loss prevention. Defendant O' Campo stated to Plaintiff "give

1 me your keys, we are going to let you go for not taking care of Radio Shack  
2 merchandise".

3 38. Plaintiff Allen was stunned. He replied, "I have the best inventory in the  
4 district, what is really going on here, it's not about the merchandise? Why are  
5 you really firing me?" Defendant O'Campo stated, "sue me".

6 39. Plaintiff was asked to leave the store he had successfully managed for 12 years.

7 40. Plaintiff asked Defendant O'Campo for something in writing stating the reason for  
8 his termination. Defendant O'Campo told him he would be would be receiving  
9 something in the mail.

10 41. To this day, Plaintiff Allen has not received a termination letter or any  
11 correspondence from defendant Radio Shack after 13 years of loyal and stellar  
12 service.

13 42. The next day, Plaintiff Allen called Defendant's Human Resources in San Ramon  
14 and told the lady that Radio Shack terminated me based "on who I am". Human  
15 Resources told Plaintiff that they would stand by the managers decision.

16 43. Plaintiff then called Fort Worth Texas and asked for Human resources so that he  
17 could make his complaint, and they referred him back to San Ramon.

18 44. Plaintiff did" not fit "the new Radio Shack non African American image and as a  
19 result he was terminated. A non African American twenty three year old replaced  
20 him. In fact, all of the employees were replaced with non-African American s and  
21 non-Hispanic employees under 40 years old.

22 45. For the year 2009, Plaintiff was voted manager of the month in the North West  
23 District for 11 out of the 12 months.

24 46. A month or so later two African American employees were terminated, the one  
25 Hispanic employee was terminated. The ONLY employee who was NOT  
26 terminated was the Caucasian employee. He is still there.  
27  
28

1 47. After 13 years of loyal and stellar service, plaintiff was replaced with a 23 year old  
2 non-African American manager. The 2 other African Americans employees were  
3 replaced with non-African American employees in their twenties.

4 48. On April 29, 2010 Plaintiff was contacted by a Radio Shack Manager who informed  
5 him that the Manager who replaced Plaintiff knew she would be taking Plaintiff's  
6 job a month prior to Plaintiff's termination.

7 49. One month prior to Plaintiff's termination, Defendants already had a 23 year old  
8 non-African American employee who fit the new Radio shack image, ready and  
9 waiting to replace Plaintiff.

10 **FIRST CAUSE OF ACTION**

11 **Disparate Treatment in Violation of FEHA Based on RACE and National Origin**  
12 **Cal. Govt. Code Sections 12900 et. seq.**  
13 **(As to All Defendants)**

14 50. Plaintiff realleges and incorporates paragraphs 1 through 49 with the same force  
15 and effect as if fully pleaded at length herein.

16 51. Jurisdiction in this court is invoked pursuant to **California Government Code § §**  
17 **12900, 12921, 12926, 12940 and 12965, specifically Sections 12940(a), 12941 and**  
18 **12921(a)** [Collectively referred to as "FEHA"]. Defendants are not exempted from  
19 the statutes cited in this paragraph by any local, state or federal laws.

20 52. Defendants regularly employ more than five employees, and are subject to suit  
21 under **FEHA** for conduct prohibited thereby. **Cal. Govt. Code Section 12940**  
22 **(j)(4)(A).**

23 53. The Plaintiff herein is a member of a class protected by **FEHA**. Plaintiff Frank  
24 Allen is African American. Plaintiff was mistreated based on his race and national  
25 origin, including but not limited being subject to being written up and  
26  
27  
28

1 terminated because he "did not fit the image" that Radio Shack now wanted for  
2 their stores. Plaintiff was wrongfully accused of committing a crime. Plaintiff was  
3 treated worse than the non African employees.  
4

5 54. At all times herein relevant, the Plaintiff's job performance was always satisfactory  
6 and was usually excellent.

7 55. Plaintiff has been subjected to discrimination and disparate treatment which  
8 treatment has included but is not limited to the following forms:  
9

10 (A) Plaintiff was wrongfully written up;

11 (B) Plaintiff was threatened by the vice President and the regional  
12 manager;

13 (C) Plaintiff was wrongfully accused of cash shortages and not  
14 protecting property.

15 (D) Defendants created and maintained an intolerable and hostile work  
16 environment for Plaintiff, including wrongful write-ups, confrontations  
17 by the wrong doers, criminal accusations and condoning the  
18 discrimination;

19 (E) Defendants disproportionately scrutinized Plaintiff's conduct;

20 (F) Defendants subjected Plaintiff to less favorable terms and conditions  
21 of his employment based on his age and race and the race of his staff;

22 (G) Defendants threatened Plaintiff that if he did not "upgrade" his  
23 employees he would be terminated;

24 (H) Defendants created and condoned a hostile work environment  
25 leading to Plaintiff's wrongful termination.  
26  
27  
28

1 56. The discriminatory acts described pursuant to the preceding paragraphs are part  
2 of a longstanding, deep-rooted policy and/or practice by the management of  
3 Defendants to discriminate and retaliate against African employees.

4  
5 57. Defendants at all times relevant herein disparately applied its alleged rules to the  
6 Plaintiff.

7 58. The managers of Defendants were either aware of the discrimination described  
8 herein and took no action to prevent it and/or themselves actively participated in  
9 the discrimination. Plaintiff petitioned the management of the Defendants to stop  
10 such discriminatory practices. Because such petitions were ignored, the Plaintiff  
11 was required to file an administrative complaint with the Department of Fair  
12 Employment and Housing, and to initiate the current lawsuit.

13  
14 59. This action is not preempted by the California Workers' Compensation Act  
15 because discrimination is not a risk or condition of employment.

16  
17 60. The acts complained of herein were either approved, condoned or taken by one or  
18 more managing agents of Defendants, each of whom had the authority to make  
19 corporate policy and/or to direct a substantial portion of the Defendants' business.

20  
21 61. Because of the aforesaid acts of Defendants, Plaintiff suffered, and continues to  
22 suffer losses of wages/salary, commissions, renewals, bonuses and other  
23 employee compensation in an amount that is currently un-ascertained. Plaintiff  
24 will therefore request leave of the court to amend this Complaint to state the  
25 amount of all such damages when they have been ascertained, or upon proof at the  
26 time of trial.

27  
28

1 62. Plaintiff was held up to great derision and embarrassment with fellow workers,  
2 friends, members of the community and family, and have suffered emotional  
3 distress because the Defendants demonstrated to Plaintiff that they would not  
4 recognize nor accept him as an employee solely because of Plaintiff's race and  
5 national origin. Plaintiff is informed and believes that the Defendants and their  
6 management acted deliberately for the purposes of injuring him. Defendants, by  
7 and through the named Defendants' agents and employees, further acted  
8 intentionally and unreasonably because they knew and/or should have known  
9 that their conduct was likely to result in severe mental distress. Plaintiff therefore  
10 seeks damages for such emotional distress in an amount to be proven at time of  
11 trial.  
12  
13  
14

15 63. Because of the wrongful acts of Defendants as herein above alleged, Plaintiff has  
16 been and will in the future be required to employ physicians and surgeons to  
17 examine, treat and care for him and will incur additional medical expenses in an  
18 amount to be proven at the time of trial.  
19

20 64. In doing the acts set forth above, Defendants acted as herein alleged with a  
21 conscious disregard of Plaintiff right to be free from discrimination and/ or  
22 disparate treatment. Defendant acted, as alleged, with the malicious intention of  
23 depriving the Plaintiff of employment opportunities and benefits that must be  
24 accorded to all employees. Defendants have retained and promoted vicious  
25 employees and managers known by it to be prejudiced against Americans of  
26 African descent. This conduct by Defendants was, and is, despicable, cruel and  
27  
28

1 oppressive. Plaintiff is therefore entitled to an award of punitive damages in an  
2 amount to be proven at trial.

3 65. In bringing this action, Plaintiff has been required to retain the services of counsel.  
4 Pursuant to **Government Code § 12965(b)**, they are entitled to an award of  
5 attorney fees.  
6

7 **WHEREFORE**, Plaintiffs pray for judgment as more fully set forth herein below.

8  
9 **SECOND CAUSE OF ACTION**

10 Retaliation in Violation of FEHA  
11 Cal. Govt. Code Sections 12900 et. seq.  
12 **(As to Defendants RadioShack Corporation)**

13 66. Plaintiff realleges and incorporates all of the facts set forth in paragraphs 1 through  
14 49 with the same force and effect as if fully pleaded at length herein.

15 67. Jurisdiction in this court is invoked pursuant to **California Government Code §§**  
16 **12900, 12921, 12926, 12940 and 12965**, specifically **Section 12940(h)** [Collectively  
17 referred to as "**FEHA**"].  
18

19 68. Defendants are not exempted from the statutes cited in this paragraph by any  
20 local, state or federal laws.

21 69. Defendants regularly employ more than five employees, and are subject to suit  
22 under **FEHA** for conduct prohibited thereby.  
23

24 70. At all times herein relevant, Plaintiff's job performance was always satisfactory  
25 and was usually excellent.

26 71. This is an action for damages based on discrimination and harassment against  
27 Plaintiff for having opposed employment practices made unlawful pursuant to the  
28

1 California FAIR EMPLOYMENT AND HOUSING ACT ["FEHA "], i.e., Cal.

2 Gov. Code § 12900, 12921, 12926, 12940 and 12965, specifically Section 12940(h).

3 72. Plaintiff has engaged in activity protected by FEHA by repeatedly and persistently  
4 opposing acts by Defendant that violate the FEHA.  
5

6 73. Specifically, Plaintiff has opposed acts he reasonably believes to be discrimination  
7 and harassment based upon race. For example, Plaintiff was threatened and told to  
8 terminate his African American and Hispanic employees because they "did not fit  
9 the image' defendants wanted. Plaintiff was told he needed to "upgrade" his staff.  
10 Plaintiff was threatened that if he did not do this, he would be terminated.  
11

12 Plaintiff, as the Store Manager felt he had a superb and competent staff, which was  
13 reflected by his store's success. Soon after, plaintiff was retaliated against and  
14 terminated. As a direct and proximate result of such opposition, the Defendants  
15 have taken adverse actions against the Plaintiff that have had a significant impact  
16 on his employment status, up to and including his termination.  
17

18 74. Plaintiff is informed and believes and thereon alleges that this cause of action is  
19 not preempted by the California Workers' Compensation Act on the grounds that  
20 retaliation for opposing unlawful discrimination or harassment is not a risk or  
21 condition of his employment.  
22

23 75. As a result of the adverse employment actions by Defendants, including, including  
24 but not limited to constructive termination, Plaintiff has, and continue to, suffer a  
25 loss of wages/salary, benefits, and other forms of compensation in an amount  
26 which is currently unascertained. As a result of the acts of Defendants, the  
27  
28



1 Plaintiff herein also faces a substantial diminution of his future earning capacity in  
2 an amount which is currently unascertained. Plaintiff will therefore request leave  
3 of the court to amend this Complaint to state the amount of all such damages  
4 when he has been ascertained or upon proof at the time of trial.  
5

6 76. As a result of the adverse employment actions by Defendants, the Plaintiff has  
7 been held up to great derision and embarrassment with his fellow workers,  
8 customers, friends, members of the community and families, and has suffered  
9 emotional distress because Defendants have demonstrated to him that they would  
10 not tolerate employees complaining of the illegal employment discrimination and  
11 harassment set forth above. Plaintiff is informed and believes that the Defendants  
12 and its employees, agents and management acted deliberately for the purposes of  
13 injuring him as alleged above. Defendants, by and through their employees,  
14 agents and management, further acted intentionally and unreasonably because  
15 they knew and/or should have known that their conduct was likely to result in  
16 severe mental distress to the Plaintiff. Plaintiff therefore seeks damages for such  
17 emotional distress in an amount to be proven at time of trial.  
18  
19  
20

21 77. Because of the wrongful acts of Defendants as herein above alleged, Plaintiff has  
22 been and will in the future be required to employ physicians and surgeons to  
23 examine, treat and care for them and will incur additional medical expenses in an  
24 amount to be proven at the time of trial.  
25

26 78. In doing the acts as described above, Defendants, by and through their employees,  
27 agents and management knowingly and intentionally retaliated against those  
28

1 among its' employees, specifically the Plaintiff, who protested the discrimination  
 2 and harassment in employment set forth herein. The managing agents of  
 3 Defendants have made conscious decisions to retaliate against the Plaintiff as a  
 4 means of making "an example" of him, in the hopes of deterring other employees  
 5 from coming forward to oppose such illegal activity. In addition, said managing  
 6 agents have knowingly retained and protected vicious employees, including  
 7 agents. This conduct by Defendant was, and is, despicable, cruel and oppressive.  
 8 The Plaintiff is therefore entitled to an award of punitive damages in an amount to  
 9 be proven at trial.

10 79. In bringing this action, Plaintiffs have been required to retain the services of  
 11 counsel. Pursuant to **Government Code § 12965(b)**, they are entitled to an award  
 12 of attorney fees.

13 **WHEREFORE**, Plaintiff prays for judgment as more fully set forth herein below

### 14 **THIRD CAUSE OF ACTION**

15 Age Discrimination in Violation of FEHA  
 16 Cal. Govt. Code Sections 12900 et. seq.  
 17 (As to All Defendants)

18 80. Plaintiff incorporates by reference all of the facts set forth in paragraphs 1 through  
 19 49 with the same force and effect as if fully pleaded at length herein

20 81. Jurisdiction in this court is invoked pursuant to **California Government Code §§**  
 21 **12900, 12921, 12926, 12940 and 12965** [Collectively referred to as "**FEHA**"].

22 Defendant is not exempted from the statutes cited in this paragraph by any local,  
 23 stat or federal laws.

1 82. Defendant regularly employs more than five employees, and is subject to suit  
2 under FEHA for conduct prohibited thereby.

3 83. The plaintiff is a member of a class protected by FEHA. He is 56 years of age.

4 84. At all times herein relevant, Plaintiff's job performance was always satisfactory  
5 and was usually excellent.

6 85. Defendants terminated the employment of Plaintiff as a result of his  
7 Age. For example, after Plaintiff was asked by a Vice president, how long he had  
8 been at Radio Shack, and after looking at plaintiff from Head to toe, told plaintiff  
9 he might "have another Year with Radio Shack". In fact, a couple months later,  
10 after 13 years of loyal service, Plaintiff was terminated and replaced by a non-  
11 African American 23 year old.

12 86. As a result of the aforesaid discriminatory acts, Plaintiff has suffered and is  
13 continuing to suffer a loss of wages/salary, benefits and other employee  
14 compensation in an amount which is currently un-ascertained. Plaintiff faces a  
15 substantial diminution of her future earning capacity in an amount which is  
16 currently un-ascertained. Plaintiff will request leave of the court to amend this  
17 Complaint to state the amount of all such damages when they have been  
18 ascertained, or upon proof at the time of trial.

19 87. As a result of the aforesaid acts of discrimination, Plaintiff has been held up to  
20 great derision and embarrassment with fellow workers, friends, members of the  
21 community and family, and has continued to suffer emotional distress. Plaintiff is

1 informed and believes that the defendant and its management acted deliberately  
2 for the purposes of injuring her.

3  
4 88. Defendant, by and through its managing agents and employees, further acted  
5 intentionally and unreasonably because they knew and/or should have known  
6 that their conduct was likely to result in additional, severe mental distress.  
7 Plaintiff therefore seeks damages for such emotional distress in an amount to be  
8 proven at time of trial.  
9

10 89. Plaintiff is informed and believes and thereon allege that this cause of action is  
11 not preempted by the California Workers' Compensation Act on the grounds that  
12 employment discrimination is not a risk or condition of her employment.  
13

14 90. Because of the wrongful acts of Defendant as herein above alleged, Plaintiff has  
15 been and/ or will in the future be required to employ physicians and mental  
16 health care professionals to examine, treat and care for her and will incur  
17 additional medical expenses in an amount to be proven at the time of trial.  
18

19 91. In doing the acts set forth above, Defendant and its managing agents acted as  
20 herein alleged with a conscious disregard of Plaintiff's right to be free from  
21 discrimination based on age. Defendant acted, as alleged, with the malicious  
22 intention of depriving Plaintiff of employment opportunities and benefits that  
23 must be accorded to all employees regardless of their age. Defendant has retained,  
24 promoted and coddled employees and managers known by it to be vicious in that  
25 they are prejudiced against older employees. This conduct by Defendant was, and  
26  
27  
28

1 is, despicable, cruel and oppressive. The Plaintiff is therefore entitled to an award  
2 of punitive damages in an amount to be proven at trial.

3  
4 92. In bringing this action, Plaintiff has been required to retain the services of  
5 counsel. Pursuant to California Government Code § 12965(b), she is entitled to  
6 and hereby requests an award of attorney fees and costs of suit.

7 WHEREFORE, Plaintiff prays for judgment as more fully set forth herein below.

8 **FOURTH CAUSE OF ACTION**

9 **Harassment In Violation of FEHA**  
10 **(Hostile Work Environment)**  
11 **Cal. Govt. Code Sections 12900 et. seq.**  
12 **(As to all Defendants )**

13 93. Plaintiff realleges and incorporate paragraphs 1 through 49 with the same force  
14 and effect as if fully pleaded at length herein

15 94. Jurisdiction in this court is invoked pursuant to the **FAIR EMPLOYMENT AND**  
16 **HOUSING ACT ["FEHA "], i.e., Gov.Code §§ 12900, 12921, 12926, 12940 and**  
17 **12965, specifically Section 12940 (j).**

18 95. Defendants are comprised of entities and/or individuals with an obligation under  
19 the law to assure an environment in which its employees can work freely without  
20 fear of harassment.

21 96. Defendants have allowed, condoned, enabled and refused to prevent the  
22 harassment of Plaintiff, by themselves, agents, managerial, and other employees.

23 Said harassment included, but is not limited to, the following:

- 24 (A) Making false accusations against the plaintiff;
- 25 (B) Falsely accusing plaintiff of criminal acts
- 26 (C) Threatening Plaintiff with termination when he would not engage  
27 in racial discrimination;
- 28 (D) Verbally threatening Plaintiff with threat of termination;

(E) Ongoing excessive and disproportionate scrutiny of Plaintiff conduct;

(F) Defendants at all times creating and condoning a hostile work environment for Plaintiff;

(G) Defendants at all times creating and condoning an intolerable work environment for Plaintiff;

(H) Public humiliation of Plaintiffs by Defendants;

(I) Racially motivated disrespect toward Plaintiff; and

(J) Wrongfully Terminating Plaintiff and replacing plaintiff with 23 year old non-African American.

97. The harassment described in the preceding paragraphs and otherwise described in detail herein was and is so severe and pervasive that the working conditions of the Plaintiff was altered into a hostile and unsafe work environment.

98. The harassment described in the preceding paragraph and otherwise described in detail herein was and is so severe and pervasive that the working conditions of the Plaintiff constituted "harassment" of the Plaintiff pursuant to Cal. Govt. Code Section Section 12940 (j).

99. Repeatedly and persistently at all times relevant herein, the Plaintiff herein complained to management of the harassment described herein, but such harassment never and has never ceased.

100. As a result of the aforesaid acts of Defendants, Plaintiff has, and continues to suffer, monetary damages in an amount which is currently unascertained.

Plaintiffs will therefore request leave of the court to amend this Complaint to state

1 the amount of all such damages when they have been ascertained, or upon proof at  
2 the time of trial.

3  
4 101. As a result of the aforesaid racial harassment, the Plaintiff has been held up to  
5 great derision and embarrassment with his fellow workers, customers, friends,  
6 members of the community and families, and has suffered emotional distress  
7 because Defendants demonstrated to him that they would not recognize nor accept  
8 him as an employee solely because of their race and religion and in retaliation for  
9 plaintiff's complaints. Plaintiff is informed and believes that the Defendants and  
10 their management acted deliberately for the purposes of injuring him as alleged  
11 above. Defendants, by and through their managing agents and employees, further  
12 acted intentionally and unreasonably because they knew and/or should have  
13 known that their conduct was likely to result in severe mental distress. Plaintiff  
14 therefore seeks damages for such emotional distress in an amount to be proven at  
15 time of trial.

16  
17  
18  
19 102. Plaintiff is informed and believes and thereon alleges that this cause of action is  
20 not preempted by the California Workers' Compensation Act on the grounds that  
21 harassment is not a risk or condition of Plaintiffs' employment.

22  
23 103. Because of the wrongful acts of Defendants as herein above alleged, Plaintiff  
24 has been and will in the future be required to employ physicians and surgeons to  
25 examine, treat and care for him and will incur additional medical expenses in an  
26 amount to be proven at the time of trial.

1 104. In doing the acts set forth above, Defendants acted as herein alleged with a  
2 conscious disregard of Plaintiff's rights to a non discriminatory work place.  
3 Defendants have acted in utter disregard of their obligations under the law. The  
4 managing agents of Defendants have made conscious decisions to establish and to  
5 allow the existence of a hostile work place. In addition, said managing agents  
6 have knowingly retained and promoted vicious employees, including managers,  
7 known by Defendants to be prejudiced against African American employees and  
8 employees over the age of 40. This conduct by Defendants was, and is, despicable,  
9 cruel and oppressive. The Plaintiff is therefore entitled to an award of punitive  
10 damages in an amount to be proven at trial.  
11

12  
13 105. In bringing this action, Plaintiff has been required to retain the services of  
14 counsel. Pursuant to **Government Code § 12965(b)**, they are entitled to an award  
15 of attorney fees.  
16

17 **WHEREFORE**, Plaintiff prays for judgment as more fully set forth herein below  
18

19 **FIFTH CAUSE OF ACTION**

20 **Wrongful Termination in Violation of Public Policy**

21 **(AS TO Defendants Radio Shack)**

22 106. The facts alleged in paragraphs 1 through 49 are hereby incorporated by  
23 reference with the same force and effect as if fully pleaded at length herein.

24 107. Jurisdiction is invoked in this court pursuant to the California Supreme Court  
25 case of *Tameny v. Atlantic Richfield Company* (1980) 27 Cal. 3d 167.

26 108. There is a fundamental and well established public policy of this state against  
27 discrimination in employment on the basis of race, age, sex and national origin.  
28



1 Said public policy is embodied inter alia in Article I, Section 8 of the California  
2 Constitution.

3 109. There is also a fundamental and well established public policy of this state  
4 against discrimination on the basis of age and race. That public policy is also  
5 embodied inter alia in the California Fair Employment and Housing Act.

6 110. Defendants have a long standing policy and practice of making personnel  
7 decisions on the basis of factors prohibited by the public policies of this state.

8 111. The policy and practice described in paragraphs -- was applied specifically to  
9 the Plaintiff in this case as follows:

10  
11 (A). Termination of the employment of Plaintiff Frank Allen based upon  
12 race;

13 (B). Termination of the employment of Plaintiff Frank Allen for race  
14 discrimination in defense of others; and

15 (C). Termination of the employment of Plaintiff Frank Allen based upon  
16 Age;

17 112. As a result of the aforesaid acts of Defendants, Plaintiff has suffered, and is  
18 continuing to suffer, a loss of wages/salary, benefits, and other forms of  
19 compensation in an amount which is currently unascertained. As a result of  
20 the discriminatory and retaliatory acts of Defendants the Plaintiff herein faces  
21 substantial diminution of their future earning capacity in an amount which is  
22 currently unascertained. Plaintiff will therefore request leave of the court to  
23 amend this Complaint to state the amount of all such damages when they have  
24 been ascertained or upon proof at the time of trial.

25 113. As a result of the aforesaid acts of discrimination and retaliation in  
26 employment, the Plaintiff has been held up to great derision and  
27 embarrassment with their fellow workers, customers, friends, members of the  
28 community and families, and has suffered emotional distress because

1 Defendants have demonstrated to them that it will not recognize nor accept  
2 them as employees solely on their merits but rejects them based upon  
3 prohibited classifications described above.

4 114. Plaintiff is informed and believes that the Defendant and its management acted  
5 deliberately for the purposes of injuring them as alleged above.

6 115. Defendants, by and through their managing agents and employees, further  
7 acted intentionally and unreasonably because it knew and/or should have  
8 known that its conduct was likely to result in severe mental distress. Plaintiff  
9 therefore seeks damages for such emotional distress in an amount to be proven  
10 at time of trial.

11 116. Because of the wrongful acts of Defendants as herein above alleged, Plaintiff  
12 has been and will in the future be required to employ physicians and surgeons  
13 to examine, treat and care for them and will incur additional medical expenses  
14 in an amount to be proven at the time of trial.

15 117. In doing the acts set forth above, Defendants acted as alleged intentionally and  
16 with a conscious disregard of the Plaintiff's right to equal employment  
17 opportunities and to be free from discrimination on the basis of prohibited  
18 factors. Defendants have acted and continue to act in utter disregard of its  
19 obligations under the public policy of this state. Defendants have made  
20 conscious decisions to discriminate against its employees for reasons  
21 prohibited by law, specifically the Plaintiff herein, by treating him adversely in  
22 the manner described above.

23 118. In addition, said managing agents have retained, protected, promoted and  
24 coddled vicious employees known by it to discriminate against its employees.  
25 This conduct by Defendants was, and is, despicable, cruel and oppressive. The  
26 Plaintiff is therefore entitled to an award of punitive damages in an amount to  
27 be proven at trial.  
28

**SIXTH CAUSE OF ACTION**

Intentional Infliction of Emotional Distress - Common Law

(As to All Defendants)

126. Plaintiff realleges and incorporates paragraphs 1 through 49 with the same force and effect as if full pleaded at length herein.

127. This is an action for damages pursuant to the common law of the State of California as mandated by the California Supreme Court in the decision of Rojo v. Kliger, (1990) 52 Cal. 3d 65.

128. The acts of Defendants and agents, including managers of Defendant, as described above, were extreme and outrageous. This includes, but is not limited to, the following:

(A) Wrongful termination based on Age and Race;

(B) Falsely accusing plaintiff of criminal acts;

(C) Plaintiff was threatened and told to terminate his African American and Hispanic employees because they "did not fit the image" defendants wanted. Plaintiff was told he needed to "upgrade" his staff. Plaintiff was threatened that if he did not do this, he would be terminated. Plaintiff, as the Store Manager felt he had a superb and competent staff, which was reflected by his store's success. Plaintiff, rightfully and loyally defended his staff. Soon after, plaintiff was retaliated against and terminated;

(D) Hostile work environment,

WHEREFORE, Plaintiff prays for judgment as more fully set forth herein below.

**DEMAND FOR JURY TRIAL**

Plaintiff Frank Allen hereby demands trial of this matter by jury.

**PRAYER FOR RELIEF**

**WHEREFORE**, Plaintiff Frank Allen prays for relief as follows:

129. For compensatory damages;
130. For monetary damages to compensate for the emotional distress suffered by Plaintiff;
131. For punitive damages in an amount appropriate to punish Defendants for their wrongful and malicious conduct and to set an example for others;
132. For prejudgment and post-judgment interest accrued to date;
133. For costs of suit incurred herein;
134. For attorneys fees and costs pursuant to **California Government Code § 12965(b)** and other provisions of law; and
135. For such other relief that this Court may deem just and proper.

Dated:

LAW OFFICES OF MAYOR JOSEPH L.  
ALIOTO & ANGELA ALIOTO

By: 

ANGELA ALIOTO

Attorney for Plaintiff Frank Allen

CASE NUMBER: CGC-11-511136 FRANK ALLEN VS. RADIO SHACK CORPORATION et al

**NOTICE TO PLAINTIFF**

A Case Management Conference is set for:

**DATE: OCT-21-2011**

**TIME: 9:00AM**

**PLACE: Department 610  
400 McAllister Street  
San Francisco, CA 94102-3680**

All parties must appear and comply with Local Rule 3.

CRC 3.725 requires the filing and service of a case management statement form CM-110 no later than 15 days before the case management conference.

However, it would facilitate the issuance of a case management order **without an appearance** at the case management conference if the case management statement is filed, served and lodged in Department 610 twenty-five (25) days before the case management

Plaintiff must serve a copy of this notice upon each party to this action with the summons and complaint. Proof of service subsequently filed with this court shall so state.

**ALTERNATIVE DISPUTE RESOLUTION POLICY REQUIREMENTS**

**IT IS THE POLICY OF THE SUPERIOR COURT THAT EVERY CIVIL CASE PARTICIPATE IN EITHER MEDIATION, JUDICIAL OR NON-JUDICIAL ARBITRATION, THE EARLY SETTLEMENT PROGRAM OR SOME SUITABLE FORM OF ALTERNATIVE DISPUTE RESOLUTION PRIOR TO A MANDATORY SETTLEMENT CONFERENCE OR TRIAL.  
(SEE LOCAL RULE 4)**

Plaintiff must serve a copy of the Alternative Dispute Resolution Information Package on each defendant along with the complaint. All counsel must discuss ADR with clients and opposing counsel and provide clients with a copy of the Alternative Dispute Resolution Information Package prior to filing the Case Management Statement.

**[DEFENDANTS: Attending the Case Management Conference does not take the place of filing a written response to the complaint. You must file a written response with the court within the time limit required by law. See Summons.]**

Superior Court Alternative Dispute Resolution Coordinator  
400 McAllister Street, Room 103  
San Francisco, CA 94102  
(415) 551-3876

See Local Rules 3.6, 6.0 C and 10 D re stipulation to commissioners acting as temporary judges

## **Alternative Dispute Resolution (ADR) Program Information Package**

# **Alternatives to Trial**

**There are other ways to  
resolve a civil dispute.**

**The plaintiff must serve a copy of the ADR information package  
on each defendant along with the complaint. (CRC 3.221(c))**



**Superior Court of California  
County of San Francisco**

## Introduction

Did you know that most civil lawsuits settle without a trial?

And did you know that there are a number of ways to resolve civil disputes without having to sue somebody?

These alternatives to a lawsuit are known as alternative dispute resolutions (ADR). The most common forms of ADR are mediation, arbitration and case evaluation. There are a number of other kinds of ADR as well.

In ADR, trained, impartial persons decide disputes or help parties decide disputes themselves. These persons are called neutrals. For example, in mediation, the neutral is the mediator. Neutrals normally are chosen by the disputing parties or by the court. Neutrals can help parties resolve disputes without having to go to court.

ADR is not new. ADR is available in many communities through dispute resolution programs and private neutrals.

## Advantages of ADR

ADR can have a number of advantages over a lawsuit.

- *ADR can save time.* A dispute often can be resolved in a matter of months, even weeks, through ADR, while a lawsuit can take years.
- *ADR can save money.* Court costs, attorneys fees, and expert fees can be saved.
- *ADR can be cooperative.* This means that the parties having a dispute may work together with the neutral to resolve the dispute and agree to a remedy that makes sense to them, rather than work against each other.
- *ADR can reduce stress.* There are fewer, if any, court appearances. And because ADR can be speedier, and save money, and because the parties are normally cooperative, ADR is easier on the nerves. The parties don't have a lawsuit hanging over their heads for years.
- *ADR encourages participation.* The parties may have more chances to tell their side of the story than in court and may have more control over the outcome.
- *ADR is flexible.* The parties can choose the ADR process that is best for them. For example, in mediation the parties may decide how to resolve their dispute.
- *ADR can be more satisfying.* For all the above reasons, many people have reported a high degree of satisfaction with ADR.

Because of these advantages, many parties choose ADR to resolve a dispute, instead of filing a lawsuit. Even when a lawsuit has been filed, the court can refer the dispute to a neutral before the parties' position harden and the lawsuit becomes costly. ADR has been used to resolve disputes even after a trial, when the result is appealed.

## **Disadvantages of ADR**

ADR may not be suitable for every dispute.

- If ADR is binding, the parties normally give up most court protections, including a decision by a judge or jury under formal rules of evidence and procedure, and review for legal error by an appellate court.
- There generally is less opportunity to find out about the other side's case with ADR than with litigation. ADR may not be effective if it takes place before the parties have sufficient information to resolve the dispute.
- The neutral may charge a fee for his or her services.
- If a dispute is not resolved through ADR, the parties may have to put time and money into both ADR and a lawsuit.
- Lawsuits must be brought within specified periods of time, known as statutes of limitation. Parties must be careful not to let a statute of limitations run out while a dispute is in an ADR process.



## **ALTERNATIVE DISPUTE RESOLUTION PROGRAMS Of the San Francisco Superior Court**

"It is the policy of the Superior Court that every noncriminal, nonjuvenile case participate either in an early settlement conference, mediation, arbitration, early neutral evaluation or some other alternative dispute resolution process prior to a mandatory settlement conference or trial."  
(Superior Court Local Rule 4)

This guide is designed to assist attorneys, their clients and self-represented litigants in complying with San Francisco Superior Court's alternative dispute resolution ("ADR") policy. Attorneys are encouraged to share this guide with clients. By making informed choices about dispute resolution alternatives, attorneys, their clients and self-represented litigants may achieve a more satisfying resolution of civil disputes.

The San Francisco Superior Court currently offers three ADR programs for general civil matters; each program is described below:

- 1) Judicial Arbitration
- 2) Mediation
- 3) The Early Settlement Program (ESP) in conjunction with the San Francisco Bar Association.

### **JUDICIAL ARBITRATION**

#### ***Description***

In arbitration, a neutral "arbitrator" presides at a hearing where the parties present evidence through exhibits and testimony. The arbitrator applies the law to the facts of the case and makes an award based upon the merits of the case. When the Court orders a case to arbitration it is called judicial arbitration. The goal of arbitration is to provide parties with an adjudication that is earlier, faster, less formal, and usually less expensive than a trial. Upon stipulation of all parties, other civil matters may be submitted to judicial arbitration.

Although not currently a part of the Court's ADR program, civil disputes may also be resolved through private arbitration. Here, the parties

voluntarily consent to arbitration. If all parties agree, private arbitration may be binding and the parties give up the right to judicial review of the arbitrator's decision. In private arbitration, the parties select a private arbitrator and are responsible for paying the arbitrator's fees.

### ***Operation***

Pursuant to CCP 1141.11 and Local Rule 4, all civil actions in which the amount in controversy is \$50,000 or less, and no party seeks equitable relief, shall be ordered to arbitration. A case is ordered to arbitration after the Case Management Conference. An arbitrator is chosen from the Court's Arbitration Panel. Most cases ordered to arbitration are also ordered to a pre-arbitration settlement conference. Arbitrations are generally held between 7 and 9 months after a complaint has been filed. Judicial arbitration is not binding unless all parties agree to be bound by the arbitrator's decision. Any party may request a court trial within 30 days after the arbitrator's award has been filed.

### ***Cost***

There is no cost to the parties for judicial arbitration or for the pre-arbitration settlement conference.

## **MEDIATION**

### ***Description***

Mediation is a voluntary, flexible, and confidential process in which a neutral third party "mediator" facilitates negotiations. The goal of mediation is to reach a mutually satisfactory agreement that resolves all or part of the dispute after exploring the significant interests, needs, and priorities of the parties in light of relevant evidence and the law.

Although there are different styles and approaches to mediation, most mediations begin with presentations of each side's view of the case. The mediator's role is to assist the parties in communicating with each other, expressing their interests, understanding the interests of opposing parties, recognizing areas of agreement and generating options for resolution. Through questions, the mediator aids each party in assessing the strengths and weaknesses of their position.

A mediator does not propose a judgment or provide an evaluation of the merits and value of the case. Many attorneys and litigants find that mediation's emphasis on cooperative dispute resolution produces more satisfactory and enduring resolutions. Mediation's non-adversarial approach is particularly effective in disputes in which the parties have a continuing relationship, where there are multiple parties, where equitable relief is sought, or where strong personal feelings exist.

### ***Operation***

San Francisco Superior Court Local Court Rule 4 **provides three different voluntary mediation programs** for civil disputes. An appropriate program is available for all civil cases, regardless of the type of action or type of relief sought.

To help litigants and attorneys identify qualified mediators, the Superior Court maintains a list of mediation providers whose training and experience have been reviewed and approved by the Court. The list of court approved mediation providers can be found at [www.sfsuperiorcourt.org](http://www.sfsuperiorcourt.org). Litigants are not limited to mediators on the court list and may select any mediator agreed upon by all parties. A mediation provider need not be an attorney.

Local Rule 4.2 D allows for mediation in lieu of judicial arbitration, so long as the parties file a stipulation to mediate within 240 days from the date the complaint is filed. If settlement is not reached through mediation, a case proceeds to trial as scheduled.

### ***Private Mediation***

The Private Mediation program accommodates cases that wish to participate in private mediation to fulfill the court's alternative dispute resolution requirement. The parties select a mediator, panel of mediators or mediation program of their choice to conduct the mediation. The cost of mediation is borne by the parties equally unless the parties agree otherwise.

Parties in civil cases that have not been ordered to arbitration may consent to private mediation at any point before trial. Parties willing to submit a matter to private mediation should indicate this preference on the Stipulation to Alternative Dispute Resolution form or the Case Management Statement (CM-110). Both forms are attached to this packet.

### ***Mediation Services of the Bar Association of San Francisco***

The Mediation Services is a coordinated effort of the San Francisco Superior Court and The Bar Association of San Francisco (BASF) in which a court approved mediator provides three hours of mediation at no charge to the parties. It is designed to afford civil litigants the opportunity to engage in early mediation of a case shortly after filing the complaint, in an effort to resolve the matter before substantial funds are expended on the litigation process. Although the goal of the program is to provide the service at the outset of the litigation, the program may be utilized at anytime throughout the litigation process.

The mediators participating in the program have been pre-approved by BASF pursuant to strict educational and experience requirements.

After the filing of the signed Stipulation to Alternative Dispute Resolution form included in this ADR package the parties will be contacted by BASF. Upon payment of the \$250 per party administration fee, parties select a specific mediator from the list of approved mediation providers or BASF will help them select an appropriate mediator for the matter. The hourly mediator fee beyond the first three hours will vary depending on the mediator selected. Waiver of the administrative fee based on financial hardship is available.

A copy of the Mediation Services rules can be found on the BASF website at [www.sfbar.org/mediation](http://www.sfbar.org/mediation) or you may call the BASF at 415-982-1600.

### ***Judicial Mediation***

The Judicial Mediation program is designed to provide early mediation of complex cases by volunteer judges of the San Francisco Superior Court. Cases considered for the program include construction defect, employment discrimination, professional malpractice, insurance coverage, toxic torts and industrial accidents.

Parties interested in judicial mediation should file the Stipulation to Alternative Dispute Resolution form attached to this packet indicating a joint request for inclusion in the program. A preference for a specific judge may be indicated. The court's Alternative Dispute Resolution Coordinator will coordinate assignment of cases that qualify for the program.

### **Cost**

Generally, the cost of Private Mediation ranges from \$100 per hour to \$800 per hour and is shared equally by the parties. Many mediators are willing to adjust their fees depending upon the income and resources of the parties. Any party who meets certain eligibility requirements may ask the court to appoint a mediator to serve at no cost to the parties.

The Mediation Services of the Bar Association of San Francisco provides three hours of mediation time at no cost with a \$250 per party administrative fee.

There is no charge for participation in the Judicial Mediation program.

## **EARLY SETTLEMENT PROGRAM**

### ***Description***

The Bar Association of San Francisco, in cooperation with the Court, offers an Early Settlement Program ("ESP") as part of the Court's settlement conference calendar. The goal of early settlement is to provide participants an opportunity to reach a mutually acceptable settlement that resolves all or part of the dispute. The two-member volunteer attorney panel reflects a balance between plaintiff and defense attorneys with at least 10 years of trial experience.

As in mediation, there is no set format for the settlement conference. A conference typically begins with a brief meeting with all parties and counsel, in which each is given an opportunity to make an initial statement. The panelists then assist the parties in understanding and candidly discussing the strengths and weaknesses of the case. The Early Settlement Conference is considered a "quasi-judicial" proceeding and, therefore, is not entitled to the statutory confidentiality protections afforded to mediation.

### ***Operation***

Civil cases enter the ESP either voluntarily or through assignment by the Court. Parties who wish to choose the early settlement process should indicate this preference on the Case Management Statement (CM-110).

If the Court assigns a matter to the ESP, parties may consult the ESP program materials accompanying the "Notice of the Early Settlement Conference" for information regarding removal from the program.

Participants are notified of their ESP conference date approximately 4 months prior to trial. The settlement conference is typically held 2 to 3 months prior to the trial date. The Bar Association's ESP Coordinator informs the participants of names of the panel members and location of the settlement conference approximately 2 weeks prior to the conference date.

Local Rule 4.3 sets out the requirements of the ESP. All parties to a case assigned to the ESP are required to submit a settlement conference statement prior to the conference. All parties, attorneys who will try the case, and insurance representatives with settlement authority are required to attend the settlement conference. If settlement is not reached through the conference, the case proceeds to trial as scheduled.

#### **Cost**

All parties must submit a \$250 generally non-refundable administrative fee to the Bar Association of San Francisco. Parties who meet certain eligibility requirements may request a fee waiver. For more information, please contact the ESP Coordinator at (415) 782-9000 ext. 8717.

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For further information about San Francisco Superior Court ADR programs or dispute resolution alternatives, please contact:

Superior Court Alternative Dispute Resolution,  
400 McAllister Street, Room 103.  
San Francisco, CA 94102  
(415) 551-3876

Or, visit the Superior Court Website at [www.sfsuperiorcourt.org](http://www.sfsuperiorcourt.org)

**SUPERIOR COURT OF CALIFORNIA  
COUNTY OF SAN FRANCISCO**

400 McAllister Street, San Francisco, CA 94102-4514

<p align="center">Plaintiff</p> <p align="center">v.</p> <p align="center">Defendant</p>	<p>Case No. _____</p> <p><b>STIPULATION TO ALTERNATIVE DISPUTE RESOLUTION</b></p> <p align="center"><b>DEPARTMENT 212</b></p>
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The parties hereby stipulate that this action shall be submitted to the following alternative dispute resolution process:

- |   |   |   |
|---|---|---|
| <input type="checkbox"/> Private Mediation                  | <input type="checkbox"/> Mediation Services of BASF | <input type="checkbox"/> Judicial Mediation |
| <input type="checkbox"/> Binding arbitration                |   | Judge _____                                 |
| <input type="checkbox"/> Non-binding judicial arbitration   |   | Judge _____                                 |
| <input type="checkbox"/> BASF Early Settlement Program      |   |   |
| <input type="checkbox"/> Other ADR process (describe) _____ |   |   |

Plaintiff(s) and Defendant(s) further agree as follows:

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Name of Party Stipulating _____	Name of Party or Attorney Executing Stipulation _____	Signature of Party or Attorney _____
<input type="checkbox"/> Plaintiff <input type="checkbox"/> Defendant <input type="checkbox"/> Cross-defendant		Dated: _____

Name of Party Stipulating _____	Name of Party or Attorney Executing Stipulation _____	Signature of Party or Attorney _____
<input type="checkbox"/> Plaintiff <input type="checkbox"/> Defendant <input type="checkbox"/> Cross-defendant		Dated: _____

Name of Party Stipulating _____	Name of Party or Attorney Executing Stipulation _____	Signature of Party or Attorney _____
<input type="checkbox"/> Plaintiff <input type="checkbox"/> Defendant <input type="checkbox"/> Cross-defendant		Dated: _____

☐ Additional signature(s) attached

CM-110

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address):      TELEPHONE NO.: _____ FAX NO. (Optional): _____ E-MAIL ADDRESS (Optional): _____ ATTORNEY FOR (Name): _____	<b>FOR COURT USE ONLY</b>
SUPERIOR COURT OF CALIFORNIA, COUNTY OF _____ STREET ADDRESS: _____ MAILING ADDRESS: _____ CITY AND ZIP CODE: _____ BRANCH NAME: _____	
PLAINTIFF/PETITIONER: _____ DEFENDANT/RESPONDENT: _____	
<b>CASE MANAGEMENT STATEMENT</b> (Check one): <input type="checkbox"/> <b>UNLIMITED CASE</b> (Amount demanded exceeds \$25,000) <input type="checkbox"/> <b>LIMITED CASE</b> (Amount demanded is \$25,000 or less)	
<b>CASE NUMBER:</b> _____	
A CASE MANAGEMENT CONFERENCE is scheduled as follows: Date: _____ Time: _____ Dept.: _____ Div.: _____ Room: _____ Address of court (if different from the address above): _____ <input type="checkbox"/> Notice of Intent to Appear by Telephone, by (name): _____	

**INSTRUCTIONS:** All applicable boxes must be checked, and the specified information must be provided.

1. Party or parties (answer one):
  - a. ☐ This statement is submitted by party (name):
  - b. ☐ This statement is submitted jointly by parties (names):
  
2. Complaint and cross-complaint (to be answered by plaintiffs and cross-complainants only)
  - a. The complaint was filed on (date):
  - b. ☐ The cross-complaint, if any, was filed on (date):
  
3. Service (to be answered by plaintiffs and cross-complainants only)
  - a. ☐ All parties named in the complaint and cross-complaint have been served, or have appeared, or have been dismissed.
  - b. ☐ The following parties named in the complaint or cross-complaint
    - (1) ☐ have not been served (specify names and explain why not):
    - (2) ☐ have been served but have not appeared and have not been dismissed (specify names):
    - (3) ☐ have had a default entered against them (specify names):
  - c. ☐ The following additional parties may be added (specify names, nature of involvement in case, and the date by which they may be served):
  
4. Description of case
  - a. Type of case in ☐ complaint ☐ cross-complaint (Describe, including causes of action):



CM-110

PLAINTIFF/PETITIONER:	CASE NUMBER:
DEFENDANT/RESPONDENT:	

4. b. Provide a brief statement of the case, including any damages. (If personal injury damages are sought, specify the injury and damages claimed, including medical expenses to date [indicate source and amount], estimated future medical expenses, lost earnings to date, and estimated future lost earnings. If equitable relief is sought, describe the nature of the relief.)

☐ (If more space is needed, check this box and attach a page designated as Attachment 4b.)

5. Jury or nonjury trial

The party or parties request ☐ a jury trial ☐ a nonjury trial. (If more than one party, provide the name of each party requesting a jury trial):

6. Trial date

a. ☐ The trial has been set for (date):

b. ☐ No trial date has been set. This case will be ready for trial within 12 months of the date of the filing of the complaint (if not, explain):

c. Dates on which parties or attorneys will not be available for trial (specify dates and explain reasons for unavailability):

7. Estimated length of trial

The party or parties estimate that the trial will take (check one):

a. ☐ days (specify number):

b. ☐ hours (short causes) (specify):

8. Trial representation (to be answered for each party)

The party or parties will be represented at trial ☐ by the attorney or party listed in the caption ☐ by the following:

a. Attorney:

b. Firm:

c. Address:

d. Telephone number:

e. Fax number:

f. E-mail address:

g. Party represented:

☐ Additional representation is described in Attachment 8.

9. Preference

☐ This case is entitled to preference (specify code section):

10. Alternative Dispute Resolution (ADR)

a. Counsel ☐ has ☐ has not provided the ADR information package identified in rule 3.221 to the client and has reviewed ADR options with the client.

b. ☐ All parties have agreed to a form of ADR. ADR will be completed by (date):

c. ☐ The case has gone to an ADR process (indicate status):

CM-110

PLAINTIFF/PETITIONER:	CASE NUMBER:
DEFENDANT/RESPONDENT:	

10. d. The party or parties are willing to participate in (check all that apply):
- (1) ☐ Mediation
  - (2) ☐ Nonbinding judicial arbitration under Code of Civil Procedure section 1141.12 (discovery to close 15 days before arbitration under Cal. Rules of Court, rule 3.822)
  - (3) ☐ Nonbinding judicial arbitration under Code of Civil Procedure section 1141.12 (discovery to remain open until 30 days before trial; order required under Cal. Rules of Court, rule 3.822)
  - (4) ☐ Binding judicial arbitration
  - (5) ☐ Binding private arbitration
  - (6) ☐ Neutral case evaluation
  - (7) ☐ Other (specify):
- e. ☐ This matter is subject to mandatory judicial arbitration because the amount in controversy does not exceed the statutory limit.
- f. ☐ Plaintiff elects to refer this case to judicial arbitration and agrees to limit recovery to the amount specified in Code of Civil Procedure section 1141.11.
- g. ☐ This case is exempt from judicial arbitration under rule 3.811 of the California Rules of Court (specify exemption):

## 11. Settlement conference

- ☐ The party or parties are willing to participate in an early settlement conference (specify when):

## 12. Insurance

- a. ☐ Insurance carrier, if any, for party filing this statement (name):
- b. Reservation of rights: ☐ Yes ☐ No
- c. ☐ Coverage issues will significantly affect resolution of this case (explain):

## 13. Jurisdiction

Indicate any matters that may affect the court's jurisdiction or processing of this case, and describe the status.

- ☐ Bankruptcy ☐ Other (specify):

Status:

## 14. Related cases, consolidation, and coordination

- a. ☐ There are companion, underlying, or related cases.
- (1) Name of case:
  - (2) Name of court:
  - (3) Case number:
  - (4) Status:
- ☐ Additional cases are described in Attachment 14a.
- b. ☐ A motion to ☐ consolidate ☐ coordinate will be filed by (name party):

## 15. Bifurcation

- ☐ The party or parties intend to file a motion for an order bifurcating, severing, or coordinating the following issues or causes of action (specify moving party, type of motion, and reasons):

## 16. Other motions

- ☐ The party or parties expect to file the following motions before trial (specify moving party, type of motion, and issues):

CM-110

PLAINTIFF/PETITIONER:	CASE NUMBER:
DEFENDANT/RESPONDENT:	

## 17. Discovery

- a. ☐ The party or parties have completed all discovery.
- b. ☐ The following discovery will be completed by the date specified (*describe all anticipated discovery*):

PartyDescriptionDate

- c. ☐ The following discovery issues are anticipated (*specify*):

## 18. Economic litigation

- a. ☐ This is a limited civil case (i.e., the amount demanded is \$25,000 or less) and the economic litigation procedures in Code of Civil Procedure sections 90 through 98 will apply to this case.
- b. ☐ This is a limited civil case and a motion to withdraw the case from the economic litigation procedures or for additional discovery will be filed (*if checked, explain specifically why economic litigation procedures relating to discovery or trial should not apply to this case*):

## 19. Other issues

- ☐ The party or parties request that the following additional matters be considered or determined at the case management conference (*specify*):

## 20. Meet and confer

- a. ☐ The party or parties have met and conferred with all parties on all subjects required by rule 3.724 of the California Rules of Court (*if not, explain*):
- b. After meeting and conferring as required by rule 3.724 of the California Rules of Court, the parties agree on the following (*specify*):

21. Total number of pages attached (*if any*): \_\_\_\_\_

I am completely familiar with this case and will be fully prepared to discuss the status of discovery and ADR, as well as other issues raised by this statement; and will possess the authority to enter into stipulations on these issues at the time of the case management conference, including the written authority of the party where required.

Date:

(TYPE OR PRINT NAME)

(SIGNATURE OF PARTY OR ATTORNEY)

(TYPE OR PRINT NAME)

(SIGNATURE OF PARTY OR ATTORNEY)

☐ Additional signatures are attached.



## Superior Court of California County of San Francisco



HON. KATHERINE FEINSTEIN  
PRESIDING JUDGE

### Judicial Mediation Program

JENIFFER B. ALCANTARA  
ADR ADMINISTRATOR

The Judicial Mediation program offers mediation in civil litigation with a San Francisco Superior Court judge familiar with the area of the law that is the subject of the controversy. Cases that will be considered for participation in the program include, but are not limited to personal injury, professional malpractice, construction, employment, insurance coverage disputes, mass torts and complex commercial litigation. Judicial Mediation offers civil litigants the opportunity to engage in early mediation of a case shortly after filing the complaint in an effort to resolve the matter before substantial funds are expended. This program may also be utilized at anytime throughout the litigation process. The panel of judges currently participating in the program includes:

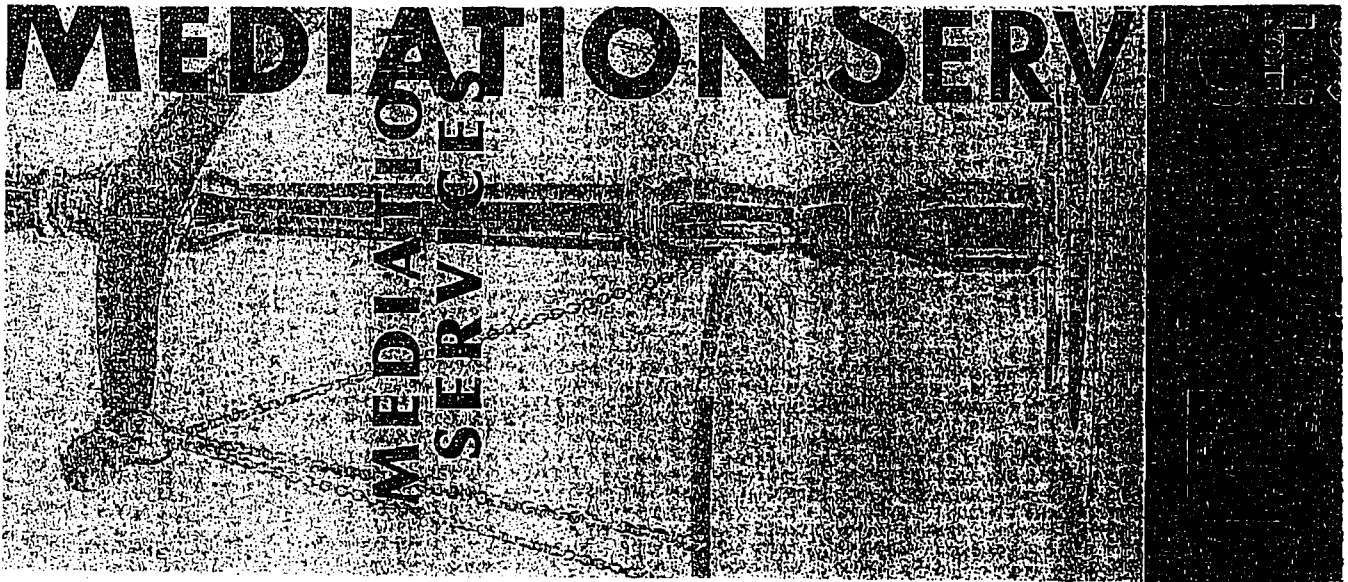
The Honorable Linda Colfax  
The Honorable Michael Begert  
The Honorable Gail Dekreon  
The Honorable Ernest H. Goldsmith  
The Honorable Harold E. Kahn  
The Honorable Curtis Karnow  
The Honorable Charlene P. Kiesselbach  
The Honorable Patrick J. Mahoney

The Honorable Tomar Mason  
The Honorable James J. McBride  
The Honorable Ronald Quidachay  
The Honorable A. James Robertson, II  
The Honorable John K. Stewart  
The Honorable Monica F. Wiley  
The Honorable Mary E. Wiss  
The Honorable Charlotte W. Woolard

Parties interested in Judicial Mediation should file the Stipulation to Alternative Dispute Resolution form indicating a joint request for inclusion in the program and deliver a courtesy copy to Dept. 610. A preference for a specific judge may be indicated on the form but assignment to a particular judge is not guaranteed. Please allow at least 30 days from the filing of the form to receive the notice of assignment. The court Alternative Dispute Resolution Administrator will facilitate assignment of cases that qualify for the program.

Note: Space and availability is limited. Submission of a stipulation to Judicial Mediation does *not* guarantee inclusion in the program. You will receive written notification from the court as to the outcome of your application.

Alternative Dispute Resolution  
400 McAllister Street, Room 103, San Francisco, CA 94102  
(415) 551-3876



## What users are saying . . .

"We had an excellent experience and, after 8 1/2 hours of mediation, [the BASF mediator] settled a very difficult case involving claims against four clients of ours by a wealthy investor who claimed inadequate disclosure was made."

Robert Charles Friese, Esq.  
Shattis Friese LLP

"The BASF Mediation Services is the best deal in town and the mediator was the best I have ever experienced."

Vernon Bradley, Esq.  
Bradley Law Offices

"Much thanks to the mediator and The Bar Association of San Francisco. The mediator was extraordinary; he went above and beyond the call of duty, and his knowledge of real property issues greatly assisted the parties."

Robert P. Travis, Esq.  
Travis and Pon

"BASF staff was very helpful – stayed on the task and kept after a hard to reach party. The mediator was great!"

Mark Abelson, Esq.  
Campagnoli, Abelson  
& Campagnoli

"The [BASF] mediator was excellent! He was effective with some strong, forceful personalities."

Denise A. Leadbetter, Esq.  
Zacks, Utrecht & Leadbetter

PROFESSIONAL MEDIATION  
FOR DISPUTES AND  
CONFLICTS  
www.basfmediation.com  
Contact: Barbara at 982-1600

Business  
Civil Rights  
Commercial  
Construction  
Contracts  
Disability  
Discrimination  
Education  
Employment/Workplace  
Environmental  
Family  
Family-Certified Specialists  
Fee Disputes  
Financial  
Government  
Insurance  
Intellectual Property  
Intra-Organizational  
Labor  
Landlord/Tenant  
Land Use  
LGBT Issues  
Malpractice: Legal-Medical-Professional  
Partnership Dissolutions  
Personal Injury  
Probate/Trust  
Products Liability  
Real Estate  
Securities  
Taxation  
Uninsured Motorist  
Women's Issues  
And more...



### **WHAT IS BASF'S MEDIATION SERVICE?**

Mediation Services was established in 2005 by The Bar Association of San Francisco (BASF) with extensive input from experienced mediators, litigators and judges. Our mediation service can assist with almost any type of dispute, from simple contract disputes to complex commercial matters.

### **WHO ARE THE MEDIATORS?**

They are established mediators who have private mediation practices and have met our rigorous training and experience requirements. By going through BASF, you receive the services of these highly qualified mediators at a great value.

### **HOW MUCH DOES THE SERVICE COST?**

A \$250 per party administrative fee is paid to BASF. This fee covers the first hour of mediator preparation time and the first two hours of session time, but your mediation is not limited to three hours. Time beyond these three hours is paid at the mediator's normal hourly rate. To qualify for the pro-bono hours from our professional mediators, parties must file the Consent to Mediate form with BASF.

### **HOW IS THE MEDIATOR CHOSEN?**

You may request a specific mediator from our website ([www.sfbat.org/mediation](http://www.sfbat.org/mediation)) and indicate your choice on the BASF Consent to Mediate form, or you may indicate on the form that you would like BASF to assist with the selection.

### **WHY DO THE MEDIATORS GIVE FREE HOURS; IS THE SERVICE ONLY FOR "SMALL" MATTERS?**

The mediators are professionals who have agreed to provide the free time as a service to BASF, allowing us to offer a unique mediation panel of high quality and value. Our mediators are available for any size case; we've handled everything from simple property disputes to complex business matters.

### **WHY SHOULD I GO THROUGH BASF, CAN'T I JUST CALL THE MEDIATOR DIRECTLY?**

The BASF mediators are available privately but have also agreed to serve on our panel and provide three free hours as a service to BASF. If you go directly to one of our mediators, you do not qualify for the pro-bono hours. Once you have filed with us, you will work directly with the mediator.

### **HOW LONG IS THE MEDIATION SESSION?**

The time spent in mediation will vary depending on your dispute. The mediators are dedicated to reaching a settlement, whether you need a few hours or several days.

### **WHO CAN USE THE SERVICE?**

The BASF mediators can be utilized by anyone and is NOT limited to San Francisco residents or issues. Also, the service may be used before a court action is filed or at any time during court action.

### **OUR CASE IS FILED IN COURT; HOW DO WE USE BASF'S MEDIATION SERVICE?**

When you file the San Francisco court's stipulation to ADR, simply check the box indicating your choice as Mediation Services of BASF. Then complete BASF's Consent to Mediate form found on our website and file it with us, or call us for the form. (If the matter was filed in a different county, please check with that court for the appropriate process.)

### **WE ARE ON A DEADLINE; HOW QUICKLY CAN WE MEDIATE?**

Once all parties have filed the BASF Consent to Mediate form and paid the administrative fees, BASF can normally have you in touch with the mediator within a day or two. If you have a deadline, staff will give the matter top priority.

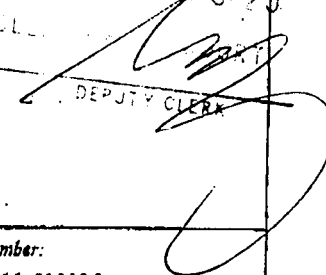
### **WHAT TYPES OF DISPUTES CAN I MEDIATE?**

BASF mediators are trained in dozens of areas of disputes. If you don't see the area you need in our 30+ panels found on our website and this brochure, just contact us; it is very likely we can match your need with one of our panelists.

### **MORE INFORMATION**

Our website provides photographs, short biographies and hourly rates of our mediators. You can search by name or by area of law. For personal assistance, please call 415-982-1600.

[WWW.SFBAR.ORG/MEDIATION](http://WWW.SFBAR.ORG/MEDIATION) • [ADR@SFBAR.ORG](mailto:ADR@SFBAR.ORG) • 415.982.1600

Attorney or Party without Attorney: ANGELA ALIOTO, ESQ., SB# 130328 LAW OFFICES OF JOSEPH L. ALIOTO AND ANGELA ALIOTO 700 Montgomery Street San Francisco, CA 94111 Telephone No: (415) 434-8700		For Court Use Only 2011 JUN -2 PM 3:25 BY:  DEPUTY CLERK	
Attorney for: Plaintiff Frank Allen		Ref. No. or File No.:	
Insert name of Court, and Judicial District and Branch Court: SAN FRANCISCO COUNTY SUPERIOR COURT			
Plaintiff: FRANK ALLEN			
Defendant/Cross Complainant: RADIO SHACK CORPORATION			
<b>PROOF OF SERVICE SUMMONS &amp; COMPLAINT</b>		Hearing Date: Fri, Oct. 21, 2011	Time: 9:00AM
		Dept/Div: 610	Case Number: CGC-11-511136

1. At the time of service I was at least 18 years of age and not a party to this action.
2. I served copies of the SUMMONS & COMPLAINT; NOTICE TO PLAINTIFF AND NOTICE OF CASE MANAGEMENT CONFERENCE; ADR INFORMATION PACKAGE; BLANK STIPULATION FOR ADR; BLANK CASE MANAGEMENT STATEMENT; JUDICIAL MEDIATION PROGRAM SHEET; MEDIATION SERVICES BROCHURE
3. a. Party served: RADIO SHACK CORPORATION  
 b. Person served: BECKY DE GEORGE, AUTHORIZED TO ACCEPT SERVICE; White, Female, 50 Years Old, Blonde Hair, 5 Feet 7 Inches, 170 Pounds

4. Address where the party was served: CSC, LAWYERS INCORPORATING SERVICES  
 2730 GATEWAY OAKS DRIVE  
 SUITE 100  
 SACRAMENTO, CA 95833

**BY FAX**

5. I served the party:  
 a. by personal service. I personally delivered the documents listed in item 2 to the party or person authorized to receive service of process for the party (1) on: Thu., May. 26, 2011 (2) at: 3:38PM
6. The "Notice to the Person Served" (on the Summons) was completed as follows:  
 on behalf of: RADIO SHACK CORPORATION  
 Under CCP 416.10 (corporation)

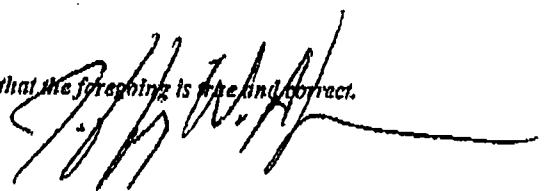
7. Person Who Served Papers:  
 a. JEFFREY W ABEGGLEN  
 b. MERCURY INVESTIGATIONS  
 3645 GRAND AVENUE  
 SUITE 207  
 OAKLAND, CA 94610  
 c. 510-268-9810

Lic. No. PI 12115

- Recoverable Cost Per CCP 1033.5(a)(4)(B)  
 d. The Fee for Service was: \$100.00  
 e. I am: (3) registered California process server  
 (i) Independent Contractor  
 (ii) Registration No.: 2007-63  
 (iii) County: Sacramento  
 (iv) Expiration Date: Sun, Dec. 11, 2011

8. I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Date: Thu, May. 26, 2011



ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address): Angela Alioto, Esq. (SBN 130328) Angela M. Veronese, Esq. (SBN 2699420) Law Offices of Mayor Joseph L. Alioto and Angela Alioto 700 Montgomery, San Francisco, CA 94111 TELEPHONE NO.: 415-434-8700 FAX NO.: 415-438-4638		<b>FILED</b> Superior Court of California County of San Francisco MAY 20 2011 CLERK OF THE COURT BY <u>Parana Matt</u> Deputy Clerk	
ATTORNEY FOR (Name): Frank Allen SUPERIOR COURT OF CALIFORNIA, COUNTY OF San Francisco STREET ADDRESS: 400 McAllister Street MAILING ADDRESS: CITY AND ZIP CODE: San Francisco, CA 94102 BRANCH NAME:		CASE NAME: Frank Allen v. Radio Shack Corporation, Donna O'Campo and Does1-100	
<b>CIVIL CASE COVER SHEET</b> <input checked="" type="checkbox"/> <b>Unlimited</b> (Amount demanded exceeds \$25,000) <input type="checkbox"/> <b>Limited</b> (Amount demanded is \$25,000 or less)		<b>Complex Case Designation</b> <input type="checkbox"/> <b>Counter</b> <input type="checkbox"/> <b>Joinder</b> <b>CG</b> Filed with first appearance by defendant (Cal. Rules of Court, rule 3.402)	
		CASE NUMBER: <b>C-11-511136</b> JUDGE: DEPT.:	

Items 1-6 below must be completed (see instructions on page 2).

1. Check one box below for the case type that best describes this case:

<b>Auto Tort</b> <input type="checkbox"/> Auto (22) <input type="checkbox"/> Uninsured motorist (48) <b>Other PI/PD/W/D (Personal Injury/Property Damage/Wrongful Death) Tort</b> <input type="checkbox"/> Asbestos (04) <input type="checkbox"/> Product liability (24) <input type="checkbox"/> Medical malpractice (45) <input type="checkbox"/> Other PI/PD/W/D (23) <b>Non-PI/PD/W/D (Other) Tort</b> <input type="checkbox"/> Business tort/unfair business practice (07) <input type="checkbox"/> Civil rights (08) <input type="checkbox"/> Defamation (13) <input type="checkbox"/> Fraud (18) <input type="checkbox"/> Intellectual property (19) <input type="checkbox"/> Professional negligence (25) <input type="checkbox"/> Other non-PI/PD/W/D tort (35) <b>Employment</b> <input checked="" type="checkbox"/> Wrongful termination (36) <input type="checkbox"/> Other employment (15)	<b>Contract</b> <input type="checkbox"/> Breach of contract/warranty (06) <input type="checkbox"/> Rule 3.740 collections (09) <input type="checkbox"/> Other collections (09) <input type="checkbox"/> Insurance coverage (18) <input type="checkbox"/> Other contract (37) <b>Real Property</b> <input type="checkbox"/> Eminent domain/inverse condemnation (14) <input type="checkbox"/> Wrongful eviction (33) <input type="checkbox"/> Other real property (28) <b>Unlawful Detainer</b> <input type="checkbox"/> Commercial (31) <input type="checkbox"/> Residential (32) <input type="checkbox"/> Drugs (38) <b>Judicial Review</b> <input type="checkbox"/> Asset forfeiture (05) <input type="checkbox"/> Petition re: arbitration award (11) <input type="checkbox"/> Writ of mandate (02) <input type="checkbox"/> Other judicial review (39)	<b>Provisionally Complex Civil Litigation</b> (Cal. Rules of Court, rules 3.400-3.403) <input type="checkbox"/> Antitrust/Trade regulation (03) <input type="checkbox"/> Construction defect (10) <input type="checkbox"/> Mass tort (40) <input type="checkbox"/> Securities litigation (28) <input type="checkbox"/> Environmental/Toxic tort (30) <input type="checkbox"/> Insurance coverage claims arising from the above listed provisionally complex case types (41) <b>Enforcement of Judgment</b> <input type="checkbox"/> Enforcement of judgment (20) <b>Miscellaneous Civil Complaint</b> <input type="checkbox"/> RICO (27) <input type="checkbox"/> Other complaint (not specified above) (42) <b>Miscellaneous Civil Petition</b> <input type="checkbox"/> Partnership and corporate governance (21) <input type="checkbox"/> Other petition (not specified above) (43)
---	--	---

2. This case ☐ is ☒ is not complex under rule 3.400 of the California Rules of Court. If the case is complex, mark the factors requiring exceptional judicial management:
- |  |  |
|--|--|
| a. <input type="checkbox"/> Large number of separately represented parties<br>b. <input type="checkbox"/> Extensive motion practice raising difficult or novel issues that will be time-consuming to resolve<br>c. <input type="checkbox"/> Substantial amount of documentary evidence | d. <input type="checkbox"/> Large number of witnesses<br>e. <input type="checkbox"/> Coordination with related actions pending in one or more courts in other counties, states, or countries, or in a federal court<br>f. <input type="checkbox"/> Substantial postjudgment judicial supervision |
|--|--|
3. Remedies sought (check all that apply): a. ☒ monetary     b. ☐ nonmonetary; declaratory or injunctive relief     c. ☒ punitive
4. Number of causes of action (specify):
5. This case ☐ is ☒ is not a class action suit.
6. If there are any known related cases, file and serve a notice of related case. (You may use form CM-015.)

Date: May 20, 2011  
 Angela M. Veronese

(TYPE OR PRINT NAME)

(SIGNATURE OF PARTY OR ATTORNEY FOR PARTY)

**BY FAX****NOTICE**

- Plaintiff must file this cover sheet with the first paper filed in the action or proceeding (except small claims cases or cases filed under the Probate Code, Family Code, or Welfare and Institutions Code). (Cal. Rules of Court, rule 3.220.) Failure to file may result in sanctions.
- File this cover sheet in addition to any cover sheet required by local court rule.
- If this case is complex under rule 3.400 et seq. of the California Rules of Court, you must serve a copy of this cover sheet on all other parties to the action or proceeding.
- Unless this is a collections case under rule 3.740 or a complex case, this cover sheet will be used for statistical purposes only.

Page 1 of 2



**EXHIBIT D**

Tracy Thompson (SBN 88173)  
tt@millerlawgroup.com  
Adam J. Tullman (SBN 235694)  
ajt@millerlawgroup.com  
MILLER LAW GROUP  
A Professional Corporation  
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San Francisco, CA 94104  
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Attorneys for Defendant  
RADIO SHACK CORPORATION

SUPERIOR COURT OF THE STATE OF CALIFORNIA  
SAN FRANCISCO COUNTY SUPERIOR COURT

FRANK ALLEN,

Plaintiff,

v.

RADIO SHACK CORPORATION, DONNA  
O'CAMPO and Does 1 through 100,

Defendants.

Case No.: CGC-11-511136

**NOTICE TO SUPERIOR COURT AND TO  
ADVERSE PARTY OF REMOVAL OF  
ACTION TO FEDERAL COURT**

Complaint filed: May 20, 2011

TO THE ABOVE-ENTITLED COURT AND TO PLAINTIFF AND HIS ATTORNEYS OF  
RECORD:

PLEASE TAKE NOTICE THAT on June 23, 2011, RADIOSHACK  
CORPORATION ("Defendant") filed in the United States District Court for the Northern  
District of California its Notice of Removal of Action under 28 U.S.C. § 1441(b) (Diversity).  
A copy of that Notice of Removal is attached to this Notice as **Exhibit 1**, and is served and  
filed herewith.

1 PLEASE TAKE FURTHER NOTICE that, pursuant to 28 U.S.C. § 1446(d), the  
2 filing of said Notice of Removal of Action in the United States District Court, together with  
3 the filing of this Notice to the Superior Court and Adverse Party, effects the removal of this  
4 action, and that this Court is directed to "proceed no further unless and until the case has  
5 been remanded." 28 U.S.C. § 1446(d).

6  
7 Dated: June 20, 2011

MILLER LAW GROUP  
A Professional Corporation

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10 By: 

Adam J. Tullman  
Attorneys for Defendant RADIOSHACK  
CORPORATION

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